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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 12th June 1953

S.R.O. 1201.—Whereas the election of Shri Kapildeo, as a member of the Legislative Assembly of the State of Rajasthan, from the Neem-ka-Thana 'C' constituency of that Assembly, has been called in question by an Election Petition (No. 105 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Dinsingh, s/o Shri Lakhsingh, Shri Dn Singh, s/o Shri Balwant Singh, residents of Village Maonda Kalan, Tansil Nim-Ka-Thana, District Sikar, Shri Shaitansingh, s/o Shri Haranath Singh, Shri Bhagootsingh, s/o Shri Jiwan Singh, residents of Village Bhoodoli, P.O. Nim-Ka-Thana, District Sikar, Shri Khemchand, s/o Shri Zorawarmal, Shri Jugalil, s/o Shri Bhooramal, residents of Nim-Ka-Thana, P.O. Nim-Ka-Thana, Tehsil Nim-Ka-Thana, District Sikar;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION NO. 4 OF 1952

Din Singh and others—*Petitioners.*

Vs.

Kapildeo and others—*Respondents.*

PRESENT:

The Hon'ble Mr. Justice K. K. Sharma—*Chairman.*

Mr. A. N. Kaul—*Member.*

Mr. P. L. Shome—*Member.*

FOR THE PETITIONERS:

Shri B. P. Agrawal.

FOR THE RESPONDENT No. 1:

Shri D. M. Bhandari.

ORDER

Dated the 9th May, 1953.

Per Shome, Member.

In this Election Petition, Din Singh and 5 others, who are all electors of the Nim-ka-Thana "C" Constituency of the Rajasthan Legislative Assembly, pray for having the election to the said Assembly from the said Constituency at the last General Election declared wholly void, on the grounds that the nomination papers of respondent No. 3, Rao Udal Singh, were improperly rejected and that the result of the election has been materially affected thereby. There are two other respondents in the petition, of whom respondent No. 1, Kapildeo, is the returned candidate and respondent No. 2, Narain Singh, the defeated candidate.

Respondent No. 3, Rao Udal Singh filed on the 26th November, 1951, the last date fixed for filing nominations, three nomination papers, which were numbered as serial Nos. 3, 4, and 5. The first nomination paper No. 3 was rejected by the Returning Officer on the ground that in the Declaration of Appointment of the Election Agent, included in the form of the nomination paper, the said candidate "has appointed Swami Gulzari Sharma, s/o Ram Ral Sharma as his election agent, but the word" स्वयं को " (Swayam ko) has not been struck off while the word "मेरा" (Mera) in the alternative line मेरा (Mera) / अपना (Apna) has been struck off, which is ambiguous and signifies that the candidate has appointed himself, as well as Swami Gulzari Sharma as his Election Agent, while under the law he can only appoint one, either himself or another man, his agent".

The nomination papers Nos. 4 and 5 were rejected on the ground that Form 5-A, i.e., the form of Appointment of Election Agent was not filed along with any of these nomination papers. It may be stated that in these two nomination papers, only Swami Gulzari Sharma was declared to have been appointed the election agent and there were no other irregularities, omissions or illegalities alleged in respect thereto.

The election petition challenges only the second of the above two grounds of rejection, and states that Form 5-A, appointing Swami Gulzari Sharma as Election Agent, was duly delivered to the Returning Officer and that under the law Form 5-A was not required to be submitted with every nomination paper.

Respondent No. 1 Kapildeo (hereinafter referred to as the contesting respondent) filed a written statement contesting the petition and his pleas are that the respondent No. 3 not having filed form 5-A along with the nomination papers, committed a breach of the mandatory provisions of law, and as such the nomination papers, serial Nos. 4 and 5 were rightly rejected, that the said respondent having appointed two election agents by the nomination paper serial No. 3, the same was rightly rejected, and he raised the further pleas that the nomination papers Nos. 4 and 5 ought to have been rejected on the following additional grounds, viz.,

- (a) Respondent No. 3 had appointed two election agents, and this illegality vitiates these two nomination papers as well,
- (b) Form 5-A was not in existence even upto the time of the submission of the last nomination paper serial No. 5,
- (c) Respondent No. 3 is a Jagirdar and renders service to the State in lieu of the grant of jagir and is as such the holder of an office of profit under the Government of Rajasthan and so ineligible to be a member of the Rajasthan Legislative Assembly,
- (d) Respondent No. 3 did not submit his Return of Election Expenses and has been declared as disqualified to stand as a candidate in any Assembly elections for five years, and that in any case,
- (e) the rejection of his nomination paper has not materially affected the result of the election.

The respondent No. 2, Narain Singh, has filed a written statement practically supporting the election petition and raising an additional plea that Rao Udal Singh having appointed Swami Gulzari Sharma as his election agent on the 22nd November, 1951, under section 40 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), and that that appointment not having been revoked or cancelled, no other election agent could be appointed. He further pleaded that the nomination paper of the contesting respondent No. 1 was wrongly accepted because no appointment of election agent under section 40 of the Act was made by him in writing before the delivery of his nomination paper.

Respondent No. 3, Rao Udai Singh, has also filed a written statement in which he has admitted all the statements made in the material paragraphs Nos. 1 to 6 of the election petition and prayed that it might be declared that the rejection of his nomination papers Nos. 2 and 3 was improper and illegal, but as additional statements it is added in the said written statement that in the first nomination paper he had appointed himself and Shri Gulzari Lal Swami as his election agents, because he was given to understand that a candidate could appoint himself and one other person as his election agent and further that the required Form 5-A was given to the Returning Officer at about 2-30 P.M. on 28th November, 1951, because upto that time he did not know that the appointment of the election agent was to be made in the Form 5-A, and that the said Form 5-A was filled by him at about 2 P.M. on 28th November, 1951, at Sikar.

This written statement, which is in the English language is signed by Rao Udai Singh in Hindi and it is also signed by Shri Ram Chandra Shastri, his advocate, and another lawyer.

Thereafter the petitioners filed an application "by way of clarification", in which they stated *inter alia* that the respondent No. 3 had filed his written statement in collusion with respondent No. 1 and that it was entirely wrong to say that he had appointed two election agents in nomination form serial No. 3 and that he did not appoint Swami Gulzari Sharma his election agent upto 2 P.M. on 28th November, 1951, whereas the fact was that Swami Gulzari Sharma was appointed election agent in writing in form 5-A before delivery of nomination papers and that it was by a clerical error only that the word "Swayam Ko" remained to be struck off in the form No. 3.

On the said pleadings, the following issues were framed:—

1. Whether any of the nomination papers, serial Nos. 4 and 5, filed by the respondent No. 3 was improperly rejected on the ground that it was not accompanied by the appointment of election agent in Form 5-A?
2. If the answer to issue No. 1 is in the affirmative, was the result of election materially affected by that rejection?
3. Whether the respondent No. 3 is a jagirdar and State grantee, and has the following rights:—
 - (i) Collection and payment of revenue.
 - (ii) Granting of leases, both for agricultural and building purposes.
 - (iii) Mining rights.
- If so, does it invalidate his election?
4. Whether the respondent No. 3 appointed two election agents instead of one, and if so, whether the nomination papers serial Nos. 4 and 3 were liable to rejection also on this ground?
5. Whether the respondent No. 3 was disqualified for not having filed his return of the election expenses within the prescribed time, and if so, is the petition liable to be rejected on this ground?
6. Whether the nomination paper of respondent No. 1 was improperly accepted in the absence of any Form 5-A regarding the appointment of his election agent, and if so, can the respondent No. 2 take this objection in these proceedings when it has not been taken by the petitioner himself?
7. Whether the verification of the petition is improper by dint of only one petitioner verifying it?

Out of the above issues, issues Nos. 3, 5, 6 and 7 were not pressed at the hearing and no evidence was produced on issues Nos. 3 and 5. So these issues are answered in the negative.

Issue No. 1.—Nomination papers, serial Nos. 4 and 5, were rejected on the ground that they were not accompanied by the form of Appointment of Election Agent, i.e., Form 5-A

Under section 33(3) of the Act, it is laid down that every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election, either himself or another person who is not disqualified under the Act for the appointment and who shall be named in declaration.

This declaration referred to in the section formed part of the prescribed form of nomination paper and is as follows:—

"Appointment of Election Agent.

I hereby declare that I have appointed..... son of.....
to be my election agent. myself
as my

Signature of candidate."

In both the nomination papers serial Nos. 4 and 5, one of which is in Hindi and another in English, this declaration has been made and it has been stated by the candidate that he has appointed Swami Gulzari Sharma, son of Ram Rai Sharma, as his election agent. There is no ambiguity or irregularity therein. So the required declaration is there and the requirements of the provisions of the section have been fully complied with. There is no other provision in the Act which has made it necessary that the appointment of Election Agent in form 5-A, should form an annexure of the nomination paper. So the Returning Officer was clearly wrong in rejecting the nomination papers on this ground. It appears from a reading of his two orders rejecting the three nomination papers that he has read the word "declaration" in section 33(3) as "appointment" and has not been able to follow the distinction between a declaration of a certain thing having been done and 'h' doing of the thing itself. No provision of law has been shown to us making it compulsory for a candidate to file Form 5-A along with his nomination paper.

As a matter of fact the contesting respondent who raised these objections before the Returning Officer has now before the Tribunal given up that case and fallen back upon a new case—that there was no form 5-A in existence before the filing of the nomination paper, and, therefore, the declaration in the nomination paper to the effect that Swami Gulzari Sharma had been appointed election agent is wrong and as such the nomination paper is illegal. The contesting respondent's case, as stated in his written statement, is that the appointment of election agent in form 5-A was made after the nomination papers were filed, and he relies mainly upon the statement of respondent No. 3, Rao Udai Singh, in his written statement. In his own written statement, the contesting respondent simply stated that the "Form 5-A was not in existence even upto the time of the submission of the last nomination form serial No. 5", but the story developed in the written statement of the respondent No. 3 Rao Udai Singh, wherein it was stated that the required Form 5-A was given to the Returning Officer at 2-30 P.M. on 26th November, 1951, because upto that time the said respondent did not know that the appointment of the election agent was to be made in the Form 5-A and that the form 5-A was filled by him at about 2 P.M. on 26th November, 1951 at Sikar. An apparent inconsistency in the respondent's case may be noticed. If the respondent did not know upto 2-30 P.M. that the appointment of election agent was to be made in Form 5-A, then how did he fill up the form at 2 P.M.? That this story is false will appear from the order of the Returning Officer dated the 29th November, 1951, in which he states that the first nomination paper serial No. 3 was accompanied with the form of appointment of election agent. The point at dispute raised by the contesting respondent then before the Returning Officer was not that the form 5-A was subsequently executed and, therefore, the election agent was not appointed at the proper time or that the declaration in the nomination paper regarding the appointment of election agent was wrong, but that the form 5-A filed along with the nomination paper serial No. 3 cannot be referred to in connection with the scrutiny of the two other nomination papers serial Nos. 4 and 5. The endorsement on the first nomination paper serial No. 3 shows that it was filed before the Returning Officer at 12.30 O'clock on the 26th November, 1951, and the respondent No. 3 also states in his written statement that he had filed his three nomination papers at 12 O'clock at intervals of 5 minutes each on that day. The Returning officer was examined as a witness on behalf of the contesting respondent (R.1/W.1) and he says that this nomination form (i.e. serial No. 3, the first one to be filed before him on behalf of the respondent No. 3) was accompanied by form 5-A, and further on he says that he was definite that the Form 5-A of the appointment of election agent of Rao Udai Singh was not filed before the filing of nomination paper serial No. 3, but it accompanied the said nomination paper. He also said that if the said Form 5-A had been presented to him separately and not along with the nomination form serial No. 3, he would have made a separate note on the said form also. This Form 5-A, which has been marked as Ex. R.1/3, is dated the 22nd November, 1951, and is signed by both the candidate (Rao Udai Singh) and by the election agent (Swami Gulzari Sharma) signifying his acceptance of the agency. There is no doubt, therefore, that the appointment of Swami Gulzari Sharma as Election Agent was made before the filing of the nomination papers and that the form 5-A was executed on the 22nd November, 1951. There is no evidence to the contrary and the story of the Form 5-A being not in existence at the time of

the filing of the nomination papers or of the same having been executed at 2 P.M. on the 26th November, 1951, and having been filed before the Returning Officer at 2-30 P.M. on that date is palpably false. The respondent No. 3 also in his evidence on commission gives the go-by to the story narrated in his written statement and says that he did not remember when he had presented the Form 5-A before the Returning Officer or when he executed it. The appointment of Swami Gulzari Sharma as election agent and the proper execution of Form 5-A being thus proved, the declarations of appointment of election agent in the later two nomination papers, serial Nos. 4 and 5 were quite correct. There being nothing in law to require the filing of Form 5-A as annexure to the nomination paper compulsory, the decision of the Returning Officer rejecting these two nomination papers for non-filing of Form 5-A therewith is wrong and cannot be sustained. The issue is, therefore, found in favour of the petitioners.

Issue No. 4.—The next point for consideration is whether the respondent No. 3 appointed two election agents instead of one and if so whether the nomination papers, serial Nos. 4 and 5 also were liable to rejection on this ground. This issue has been raised at the instance of the contesting respondent and involves two points, *viz.*—

- (1) A question of fact as to whether two election agents were appointed instead of one, and
- (2) if so, what is the legal effect thereof on the validity of the nomination papers.

On the question of fact, the contention that two election agents, *viz.*, the candidate himself and Swami Gulzari Sharma were appointed is based on the

- (a) statements of the respondent No. 3 in his written statement, as narrated above,
- (b) statements of the said respondent in his evidence on commission, as a witness for the contesting respondent,
- (c) statement of Ram Chandra Shastri, respondent No. 1's witness No. 2, and
- (d) the statement in the declaration of appointment of election agent in the first nomination paper, serial No. 3.

Before going into the consideration of these statements, a point regarding the admissibility thereof needs to be noticed. Mr. B. P. Agrawal for the petitioner has contended that under section 40 of the Act, a definite provision has been made for the appointment of the election agent. It lays down that every person nominated as a candidate at an election shall, before the delivery of his nomination paper under sub-section (1) of section 33....., appoint in writing either himself or some one other person to be his election agent. He, therefore, urges that even if a candidate appoints himself as his election agent, that appointment must under the law be in writing, of which there is none in this case, and he further argues that under the provisions of section 91 of the Indian Evidence Act, any oral evidence regarding the appointment of an election agent would be inadmissible. His case is that the only writing evidencing the appointment of an election agent on behalf of the respondent No. 3 is the Form 5-A filed in the case and marked Ex. R 1/3, and no oral evidence to prove that the said candidate appointed himself as an election agent would be admissible. Mr. D. M. Bhandari for the contesting respondent, on the other hand, argues that section 91 of the Indian Evidence Act lays down that when the *terms* of a contract have been reduced to the form of a document and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the *terms* of such contract....., except the document itself or secondary evidence of its contents, in cases in which secondary evidence is admissible... What the provisions of the section interdict is the proof of the *terms* of the contract, but not the existence of the contract itself. What is sought to be proved here by the contesting respondent is that there was an agency created in favour of the candidate himself, the *terms* of such agency, if any, are not sought to be proved. I agree with Mr. Bhandari's contention. The section does not bar the proof of the transaction itself, but only the *terms* thereof. I, therefore, do not think that section 91 of the Evidence Act in any way precludes the production of extraneous evidence to prove that another election agent was appointed. Reference may be made in this connection to the case of *Mt. Makhduman v. Syed Altaf Hussain*¹, in which it was held that section 91 refers only to the method of proof of the *terms* of a contract, grant or disposition of property, but it does not exclude other proof of the transaction itself. Reference may also be made to the case of *Chhotalal Aditram Trivedi vs. Bai Mahakore*², in

¹A.I.R. 1922 Patna 222.

²I.L.R. 41 Bombay 466.

which it was held that the fact of a partition may be proved by oral evidence although the deed embodying the terms of the partition cannot be proved for want of registration. So also it was held in the case of *Ameer Ali v. Yakub Ali Khan*³, that a tenancy could be proved without proving the lease, if there be any. The Madras High Court, in the case of *Pakuri Viraraghavalu vs. Poluri Yettamandu*⁴ also held that when the existence of a sale is in question and not its terms, oral evidence as to the existence or otherwise of the sale would not be inadmissible under section 91. Their Lordships of the Privy Council also held in the case of *Nawab Major Sir Mohammad Akbar Khan vs. Attar Singh*⁵ that evidence as to an actual transaction apart from the particulars thereof was not inadmissible under section 91 or 92 of the Evidence Act. Evidence of the actual fact of the existence or otherwise of an agency in favour of the respondent No. 3 himself would not, therefore, be barred under section 91.

Let us now consider the nature and value of the evidence on the basis of which it is sought to be proved on behalf of the contesting respondent that the respondent No. 3 appointed himself also as his election agent. In paragraph (1) of the additional statement of his written statement, the said respondent states that in the first nomination paper, he had appointed himself and Shri Gulzarilal Swami as his election agents, because he was given to understand that a candidate could appoint himself and one other person as his election agents. He has repeated the same story in his deposition on commission, but he has not given out by whom he was given so to understand, nor have any of the persons, if any, who might have advised him as such been examined. Shri Ram Chandra Shastri, R.1/W.2, has stated in his deposition that he was called by the respondent No. 3 for consultation and at 8 A.M. on the 26th November, 1951, he showed him his nomination papers. Nomination paper, serial No. 3 was shown to him at the time and he advised respondent No. 3 to strike off the letters "Swayam ko" (myself) from the declaration of appointment of election agent on the nomination form, but the latter said that he wanted to appoint his ownself also as his agent and that he had been advised by other lawyers not to strike off those words. This witness also stated that the respondent No. 3 wanted to appoint his ownself also as his agent, as he could not absolutely rely on his other election agent, Gulzari Lal. This story of want of reliance was introduced for the first time by this witness and was not stated so in the written statement referred to above, where he only stated the other reason, viz., that he was given to understand that a candidate could appoint himself and one other person as his election agents. The witness further stated that Rao Udai Singh also called two or three lawyers of Sikar for consultation and one Mr. Bhargava from Hissar and that when he advised Rao Udai Singh to strike off the word "Swayam Ko" from the declaration in the nomination paper, serial No. 3, Harak Das was also present. Neither the said lawyer Mr. Bhargava or the other lawyers who are said to have been brought by Rao Udai Singh for consultation, nor the said Harak Das, who is said to have been present when Rao Udai Singh was advised to strike off the words "Swayam ko" have been examined. They were necessary witnesses to prove how far the story set up as to the appointment of two election agents and the advice regarding the striking off of the words "Swayam ko" was true, inasmuch as the petitioners have made a case that the respondent No. 3 had filed his written statement in collusion with the respondent No. 1.

As stated before, Rao Udai Singh prayed in his written statement for a declaration that "the rejection of my nomination papers were improper and illegal". The written statement was signed and filed by Shri Ram Chandra Shastri, as his advocate, and a vakalatnama was also filed engaging the said advocate, and another lawyer to conduct the case on his behalf before the Tribunal. But after the filing of the written statement the said Ram Chandra Shastri or his client did not take any part in the proceedings, except that the said Mr. Shastri appeared as a witness for the contesting respondent. The statements made by the said witness related to matters which are in the nature of professional communications between a lawyer and his client and he was not bound to disclose any advice that he might have given to his client. If he was not bound to disclose then why does he disclose? In whose interest does he do so? Whose case does the disclosure support? The alacrity with which the witness disclosed the advice he gave to his client raises a suspicion that the petitioners' case as to some collusion between the respondents Nos. 1 and 3 may be correct. Mr. Shastri has said that he is a lawyer practising for more than 20 years, and as such he must have known that he could make the disclosures.

³I.L.R. 41 Calcutta 347.

⁴95 Indian Cases 584.

⁵40 Calcutta Weekly Notes 997.

only with the consent of his client. The respondent No. 3 in his deposition has said that he did not authorise Ram Chandra Shastri to disclose these communications. If that be so, then who knows that this Ram Chandra Shastri was not a decoy, who deliberately put Respondent No. 3 in the wrong, both with regard to the nomination paper and the written statement, in order to frustrate his election? In any case, the testimony of Ramchandra Shastri is not entitled to any credence. This disclosure coupled with the fact that the respondent No. 3 or his advocate Mr. Shastri had taken absolutely no other part in the case though it was their case that the rejection of the nomination paper should be declared improper and illegal raises a probability as to the correctness of the suspicion mentioned by the petitioners. In any view of the matter, it would be difficult to rely on the evidence of these two witnesses. For his part, the respondent No. 3, as pointed out already by his conflicting and contradictory statements regarding the execution and filing of Form 5-A, has proved conclusively that he is a man who cannot be relied on as regards the correctness or truth of his statements.

Even as far as they go, what do these statements prove? Respondent No. 3 stated that he appointed himself and Gulzari Lal as his election agents. Gulzari Lal's appointment is evidenced by Form 5-A. There is no writing and it is nobody's case there was any, as to the appointment by the respondent No. 3 as his own election agent, except the declaration in the nomination paper serial No. 3. He says that he appointed himself in the first nomination paper. It has been argued that no questions were put to the respondent No. 3 by the petitioners on this point and, therefore the petitioners must be taken to have admitted the point. I do not see why the petitioners should by putting questions in cross-examination offer the said respondent an opportunity to further explain or elucidate the point, which he had not done in his examination-in-chief. If he says that he appointed himself by the first nomination paper, let us take the statement for what it is worth. The law makes definite provisions regarding appointment of election agents. Under section 40 of the Act, as has already been pointed out, the appointment of an election agent, even if the candidate himself be his election agent, has got to be in writing and that writing must be made before the filing of the nomination paper.

Section 40 lays down a definite and clear method as to how an election agent, be he the candidate himself or any other person, is to be appointed, and that method must be followed, if a valid appointment is to be made. The Hon'ble Privy Council held in the case of *Nazir Ahmed v. King Emperor* that "where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden." If the declaration in the nomination paper be the only writing, then the question would arise has there been an appointment at all? Section 33(3) of the Act provides for a declaration of the appointment of election agent and not for the appointment itself. The terms of the declaration are—"I hereby declare that I have appointed..... or myself etc." It is a declaration of an appointment previously made and not the appointment itself. Moreover, this declaration itself is ambiguous. It is not possible to ascertain therefrom in whose favour the declaration is made—"Gulzar Lal" or "myself". The unambiguity, if any, is more in favour of "Gulzar Lal" than in favour of "myself". So the declaration in the nomination paper was not and cannot be regarded as an appointment of the election agent. I do not think we should take this doubtful and ambiguous statement beyond what it implies and stretch the law and facts to build up a case and thereby impose a disqualification on a candidate. The appointment, if any, must be made by a writing before the declaration. It has not been asserted, far less proved, that there was any such writing by which respondent No. 3 appointed himself as his election agent. The evidence of the respondent No. 3 and his advocate Ram Chandra Shastri taken at their face value, apart from their reliability, goes at best to prove an intention on the part of respondent No. 3 to appoint himself as his election agent, for the reasons stated by them. There is no reliable evidence at all that the said intention had been given effect to either in fact or in law, and we have nothing before us to enable us to hold that the said respondent No. 3, though he declared as such in the nomination paper, serial No. 3, had in fact appointed himself as his election agent.

Much has been sought to be made out of the fact that the rejection of the first nomination paper, i.e., serial No. 3 has not been challenged before the Tribunal by the petitioners and a point has been sought to be made that thereby the petitioners have admitted that the respondent No. 3 had appointed two election agents, i.e., himself and Gulzari Sharma. It has been stated above that the said nomination paper by itself has not and could not prove the appointment of the candidate himself as his election agent. If no question had been raised as to the factum of

appointment, the declaration would have been sufficient for the purpose of the validity of the nomination paper. But the issue has raised a point as to "whether the respondent No. 3 appointed two election agents instead of one". The very frame of the issue shows that the factum of appointment of two agents was not admitted, but disputed. The issue was raised by the contesting defendant and it was for him to prove all the implications of the issue. For this he relied on the materials mentioned before. The fact that the rejection of the nomination paper, serial No. 3 has not been challenged does not show that the petitioners admit that two election agents were appointed. The Returning Officer said that the entry was ambiguous and it seemed that the candidate appointed himself also as his election agent. He was sure about the appointment of Gulzari Sharma, but as regards the other appointment, the position, even according to the Returning Officer, was ambiguous. The ambiguity was patent and there was no use pressing the matter and the petitioners have been well advised in not mixing up a bad or indifferent case with a good one. There is nothing in Khem Chand's evidence to show that he admitted that by the first nomination paper, the respondent No. 3 appointed two election agents. All that he said was that the petitioners felt after consultation with lawyers that in the view that had been taken by the Returning Officer, there was no use moving against the rejection of that nomination paper but that they should confine their objection to the other two nomination papers.

A reference has been made to a case decided by the Assam Election Tribunal in the case of Hazi Nasimuddin—Petitioner and Sivaprasad Sarma—Petitioner versus Baidiram Dutta and others, Respondents (Election Petitions Nos. 21 and 48 of 1952), reported in the *Gazette of India Extraordinary*, Part I—Section 1, dated the 11th November, 1952, page 2396b, in which it has been held that when a candidate appoints himself as his election agent, the statement in the declaration was sufficient and no separate writing was necessary. In this case the learned members of the Tribunal have given no reasons for their decision and they have not considered the question from all the points of view that have been raised before us.

Even if the statement in the declaration be assumed to be sufficient for a legal and valid appointment of an election agent—what does the present declaration imply? It says that he had appointed two persons in the alternative, Swami Gulzari Lal Sharma, son of Ram Rai Sharma/myself. It does not say that he had appointed "Swami Gulzarilal Sharma and myself". The import of the declaration is Swami Gulzarilal Sharma or myself. Which one of the two is then to be taken as having been appointed? As far as the language of the declaration purports, it must be either Gulzarilal or myself and cannot be both Gulzarilal and myself. I cannot read the statement in the declaration as an appointment of two election agents. The form is in the alternative and how can it be taken that the two alternatives are to be read not as alternatives but as inclusives? If he had meant to appoint both Gulzarilal and himself, as election agents, then the word "and" ought to have been added after the words "Gulzarilal Lal Sharma, son of Ram Rai Sharma". In my view, the declaration taken by itself proved that by this nomination paper no appointment of any election agent had been made, because in the form in which it stands the appointment of either of the two or of both is not clear and unambiguous and so legally no valid appointment of either has been made thereby. If an appointment of election agent had been made under section 40 of the Act, though in an irregular way, a question might have arisen as to whether the appointment was vitiated by a defect of a mere technical character, which might be overlooked under section 36(4) of the Act, but as no such appointment under section 40 has been made, the question of the application of the provisions of section 36(4) does not arise.

The question of the legal effect on the validity of the nomination of a candidate because of the fact of appointment by him of two election agents does not, therefore, arise in the case, and I have no hesitation in answering issue No. 4 in the negative.

Before going into the next issue, it remains to notice another point raised by Mr. D. M. Bhandari, Advocate for the contesting respondent. He contended that the appointment of Swami Gulzari Lal as election agent was not valid because Form 5-A appointing him as election agent was executed before nomination. This point was not taken in the written statement nor raised in the issues; moreover, it is not consistent with his previous case that Form 5-A was not in existence when the last nomination paper was filed; but as it raises a question of legality, I think it proper to go into it. Mr. Bhandari's contention is that section 40 of the Act lays down that every person nominated as a candidate at an election shall before the delivery of his nomination paper appoint in writing either himself or someone other person as his election agent. His point is that an appointment

of election agent cannot be made before a candidate is nominated. Therefore, the appointment of Gulzari Lal having been made on the 22nd November before the nomination of respondent No. 3 as a candidate which took place on the 26th November, was not legal and effective, and as such there was no election agent for respondent No. 3 and all his nomination papers must be rejected. The contention of the learned advocate is based upon the word "nominated" in section 40. The word has been used to describe a candidate and it has no reference to the time at which a candidate is to appoint his election agent. There are various categories of candidates described in the Act, *viz.*, nominated candidates, duly nominated candidates, validly nominated candidates and under section 79, clause (b), a candidate, for the purpose of Parts VI, VII, and VIII of the Act, would include also persons who with the election in prospect have begun to hold themselves out as prospective candidates. Such prospective candidates ultimately may or may not be nominated and if not so nominated, there would be no necessity for them to appoint election agents. It is for that purpose of indicating what category of candidates need appoint election agents that the word "nominated" has been used. There is nothing in the section to show that the appointment of a election agent is to be made after nomination or that any such appointment made before nomination would not be legal. An election agent is appointed for the election and

his duties *inter alia* are to keep regular books of account and to enter therein particulars of expenditure in connection with the election. Such expenditure does not begin only with or after the nomination, but from long before that. Manifestoes, posters, letters, statements etc. are printed and issued, meetings organised and addressed, travelling expenses incurred, and hundred other things in connection with the election are done before the date of the submission of the nomination paper. These expenses have got to be shown in the return of election expenses and accounts thereof kept. Reference may be made in this connection to section 44 of the Act and to Chapter VIII—Election Expenses, Rules 111 and 112 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951, and also to the form of the return of election expenses. The function of the election agent begins from long before the nomination of a candidate and it would be absurd to hold that an election agent can only be appointed after the actual nomination of a candidate. The point, therefore, fails and is negatived.

Issue No. 2.—It having thus been held that the nomination papers of the respondent No. 3 had been improperly rejected, the question arises as to whether such improper rejection has materially affected the result of the election.

It has been held by this Tribunal, as well as by other Tribunals, that an improper rejection of a nomination paper raises a presumption that the result of the election has been materially affected thereby. But that presumption is rebuttable. Let us now see what evidence of rebuttal there is in this case. We have it from the evidence of the contesting respondent No. 1 that there are about 42,000 voters in this constituency, out of whom about 5,000 are women voters, who are not effective voters, as their names do not appear in the electoral roll, but they are described only as wives, widows, or daughters of their respective husbands or fathers. The effective voters, therefore, are about 37,000. Out of these about 19,000 votes were polled and the respondent No. 1 won by a majority of about 3,000 votes. There is nothing to show what the reaction would have been on the voters, who came to the poll or how the rest of about 18,000 voters, who did not come to vote, would have reacted, if respondent No. 3, Rao Udal Singh, had been a contesting candidate. No evidence, other than his own bare statement, has been adduced by the contesting respondent to rebut the presumption mentioned above. On the other hand, there is some evidence on the side of the petitioners to show that voters coming to the poll inquired about Rao Udal Singh's ballot box and some on knowing that there was no ballot box for Rao Udal Singh went away without voting, while others voted for whomever they liked. A portion of the electorate has thus been deprived of their right to vote for the candidate of their choice. There is also evidence to the effect that Rao Udal Singh is a very influential man in the locality and he is very popular. This evidence has not been contradicted or challenged. There is thus nothing to suggest that the result of the election has not been materially affected by the improper rejection of the nomination paper of Rao Udal Singh, respondent No. 3. This issue is replied in the affirmative.

The result, therefore, is that in my opinion the election petition succeeds and should be allowed. The election to the Rajasthan Legislative Assembly from the Nim-ka-Thana C constituency should be declared to be void, and the election of respondent No. 1 Kapildeo be set aside.

(Sd.) P. L. SHOME.

Per Kaul Member.

I have had the benefit of going through the judgment of my learned brother, Shri Shome and, being unable to agree with some of his conclusions, I am constrained to record a separate judgment. The facts of the case have been already narrated in my learned brother's judgment but it would be useful to repeat and emphasise certain salient facts of the case.

Rao Uday Singh, respondent No. 3, filed 3 nomination papers on the 26th November, 1951, which were marked as serial numbers 3, 4 and 5. The scrutiny of nomination papers took place on the 29th November. In serial No. 3 which is a Hindi form and hence filled in Hindi the declaration as to appointment of election agent, which forms part of the nomination form, had been filled up by entering the name and other particulars of Swami Gulazarilal as agent in the blank space provided above the first parting line and by leaving intact the word "Swayamko" ~~स्वयं की~~ provided below the line apparently as an alternative. Of the

Mera ~~मेरा~~

following the above entries in the declaration and

Apna ~~अपना~~

provided above and below another parting line, obviously as alternatives, the word "mera" above the line had been struck off. In his order rejecting the nomination paper, serial No. 3, the Returning Officer observed that the candidate had appointed Swami Gulazari Sharma as his agent but had not struck off the words "Swayamko" while the word "mera" in the alternative line had been struck off, which was an ambiguity, and proceeded to observe that it signified that the candidate had appointed himself, as well as Swami Gulazari Sharma as his election agent. Since, according to the Returning Officer, only one election agent could be appointed under the law, the nomination paper was rejected.

In serial No. 4 which was an English form and hence filled in English, only Swami Gulzari Sharma was shown as election agent while the alternative word "myself" below the line was struck off as also the words "as my" below the second line which follow in the declaration. This nomination paper was rejected by the Returning Officer on the ground that no appointment form of the election agent (Gulzari Sharma) in form 5-A had been appended to it, the only such form having been filed with serial No. 3, which had been already rejected. Obviously, according to the Returning Officer, form 5-A was required by the law to be filed with every nomination paper. Serial No. 5 was again a Hindi form, filled in Hindi, in which the declaration was filled up by entering the name of Gulzari Sharma in the blank space above the first line and striking off the word "Swayamko" below the line and, further, by striking off the word "mera" above the second line while keeping intact the alternative word "apna" below that line. This nomination paper was also rejected on grounds similar to those of the rejection of serial No. 4.

As to the time of presentation of the three nomination forms of Rao Uday Singh there are conflicting versions. According to the statement of Shri B. P. Agarwal, counsel for petitioner, recorded under Order 10 Rule 1, all the three nomination forms were delivered at one and the same time and the apparent difference of time noted by the Returning Officer on the three nomination forms is due to the fact that he made the endorsement regarding time of presentation after examining each nomination form as required by section 33 sub-section (5) of the Representation of the Peoples Act 1951, which will be referred to, hereinafter as the Act.

According to the written statement of Rao Uday Singh respondent No. 3, which is in English but signed in Hindi, the three nomination papers were filed at about 12 o'clock at intervals of 5 minutes each. In his statement recorded on commission Rao Uday Singh stated that so far as he could remember the three nomination papers were presented simultaneously. The evidence of the Returning Officer, Shri Vishnu Dutt Sharma, is to the effect that serial Nos. 3, 4, and 5 were presented respectively at 12-30 P.M. 12-38 P.M. and 12-40 P.M. which is the respective time endorsed by the witness on the different nomination forms. His evidence is further to the effect that form 5-A, Ex. R-1/3, regarding the appointment of Gulzari Sharma as election agent, accompanied the nomination form, serial No. 3. This also appears from the Returning Officer's order of rejection of nomination paper serial No. 4. But Ex. R-1/3, by itself, does not bear any endorsement as to the time of its presentation, obviously because no such endorsement was required under the law. According to Shri B. P. Aggarwal's statement under Order 10, Rule 1, form 5-A was delivered to the Returning Officer on the 26th November, a little before the delivery of any of the three nomination forms. In the written statement of the contesting respondent it was contended that the form 5-A did not accompany any of the nomination forms and was not in existence even upto the time of delivery of the last nomination paper, Serial No. 5. In his statement,

under Order 10 Rule 1 Shri D. M. Bhandari, counsel for the contesting respondent further asserted that form 5-A had not even been filled up and signed by Rao Uday Singh till the delivery of his last nomination paper and was actually delivered to the Returning Officer at about 2 P.M. i.e. after the delivery of all the nomination papers. According to the written statement of Rao Uday Singh, respondent 3, the form 5-A was filled up by him at Sikar on the 26th November 1951 at about 2 P.M. and was delivered to the Returning Officer at about 2-30 P.M. on the same date. In his statement recorded on commission Rao Uday Singh stated, however, that, although he had appointed himself and Gulzari Sharma as his election agents he did not remember as to when he had signed the form of appointment of Gulzari Sharma as agent. In cross-examination he stated that he always gave the correct date of signing a paper and could not conceive of signing on one date and giving another. It may be stated here that the form 5-A, Ex R-1/3, on which turns largely the decision of some of the important points in this petition, bears the 22nd November 1951, as the date of its execution. According to the evidence of one of the petitioners namely Khemchandra P.W. 3, the form 5-A was filled up in his presence, by Rao Uday Singh at village Patan, his residential village, on the 22nd November. In his arguments on behalf of the contesting respondent Shri Bhandari has taken his stand on the 22nd November as the date of execution form 5-A.

In the petition itself there is no direct reference to the rejection of any particular nomination paper and there are only general statements that the rejection of "the nomination" of respondent No. 3, on the ground that each of the three nomination paper was not accompanied by the form 5-A was improper and illegal; that the form had been (duly) delivered to the Returning Officer and that the law did not require the submission of form 5-A with each nomination form. In a replication filed by the petitioners "by way of clarification" it was alleged however that respondent No. 3 had filed the written statement in collusion with respondent 1, and it was asserted that it was entirely wrong to say that respondent 3 had appointed two election agents in serial No. 3 or that he had not appointed Swami Gulzari Sharma as his election agent upto 2 p.m. on 26th November 1951. It was further stated that it was a mere clerical error that the word "Swayamko" remained to be struck off in serial No. 3. In Mr B. P. Aggarwal's statement under Order 10 R. 1, the emphasis was on the plea that form 5-A was dated the 22nd November 1951 and was delivered to the Returning Officer on the 26th November, a little before the presentation of the nomination papers. The obvious inference from the nature of these pleas is that the rejection of nomination paper serial No. 3 was not intended to be challenged by the petitioners, the non-accompaniment of form 5-A having affected only serial Nos. 4 and 5 and not serial No. 3. This is also clear from the evidence of Khemchandra petitioner in rebuttal in which he has admitted that it was decided in consultation with lawyers only to object, in the petition, to the rejection of nomination papers serial Nos. 4 and 5 and not to that of serial No. 3. It was only in the replication that a reference was made for the first time to serial No. 3 but even there it was not stated directly that this particular nomination paper had been improperly rejected.

Rao Uday Singh respondent No. 3's written statement contains categorical admissions of all the allegations made in the petition, as also a prayer that the rejection of his nomination paper serial numbers 3 and 4 be declared improper and illegal. There is, however, in addition, a statement that he had appointed himself and Gulzari Sharma as election agents under the impression that he was empowered to do so and the further statement, already referred to, that he filled up form 5-A about 2 p.m. at Sikar, on the 26th November, and handed it over on the same date to the Returning Officer at 2-30 p.m.

Respondent No. 2, Narain Singh, while supporting the petition, in his written statement, has raised two new points namely (1) that Rao Uday Singh having appointed Swami Gulzari Sharma as his election agent on 22nd November 1951 and the appointment not having been revoked or cancelled, no other agent could be appointed by him and (2) that the nomination paper of the contesting respondent was improperly accepted in the absence of an appointment of an election agent in writing before delivery of his nomination paper as required u/s 40 of the Act.

The above is the back ground of material facts against which the main points for decision in the case have to be considered. I shall now proceed to deal with the issues that remain for decision.

Issue No. 1.—The only point for decision under this issue is whether the election law, as it stands, requires that every nomination form should be accompanied by the appointment of an election agent in form 5-A. On this point there can be no two opinions. There is no provision either in the Act or in the election rules, framed thereunder, requiring the filing of form 5-A with every nomination

paper or, for the matter of that, the filing of such a form with any of the nomination papers. What rule 11-A, read with section 40 of the Act, requires is only that a person nominated as a candidate should appoint his election agent in form 5-A, when he appoints some person other than himself as his agent. The objection that Rao Uday Singh's nomination forms serial Nos. 4 and 5 were not accompanied by form 5-A and the Returning Officer's rejection of the nomination papers on that basis was therefore entirely misconceived.

It was, of course, conceivable to reject the nomination papers on the ground that no appointment of Swami Gulzari Sharma had been made in form 5-A, before delivery of the nomination papers, in case the allegation in the contesting respondent's written statement to the effect that no appointment of any election agent in form 5-A by the respondent 3 was in existence even until the time of delivery of the last nomination paper serial No. 5, had been proved to be correct. But even the learned counsel for the contesting respondent has taken up an entirely different stand in his arguments, namely that the appointment of Swami Gulzari Sharma in form 5-A was made and executed by Rao Uday Singh on the 22nd November 1951, even before the latter had been nominated as a candidate and was therefore invalid. In the circumstances the original stand as to the non-existence of form 5-A at the time of delivery of nomination papers should be deemed to have been given up.

The answer to issue No. 1, therefore, has to be in the affirmative.

Issue No. 4.—The points that have been raised in connection with this issue and which are for consideration are the following:—

- (i) Whether two election agents had, in fact, been appointed by respondent No. 3, Rao Uday Singh.
- (ii) Whether the appointment, by respondent No. 3, of himself as election agent was made only through the declaration contained in nomination paper serial No. 3 and was invalid in the absence of a separate writing and also because it was made after the first appointment of Swami Gulzari Sharma.
- (iii) Whether the appointment of two election agents even if made through nomination form serial No. 3 has no effect on the nomination forms serial Nos. 4 and 5.
- (iv) Whether the appointment of Swami Gulzari Sharma through form 5-A, Ex. R-1/3, was invalid, the form having been executed on 22nd November 1951 before the actual nomination of respondent No. 3 as a candidate.

The best evidence on the first point, obviously, can be either the writing if any evidencing the appointments of two election agents by respondent No. 3 or the testimony of respondent No. 3 himself, unless there be sufficient grounds for discarding any of these. In so far as the appointment of Swami Gulzari Sharma is concerned it is evidenced by the form 5-A, Ex. R-1/3, which bears the date 22nd November 1951 as its date of execution as also the admitted signatures of Rao Uday Singh and the acceptance of Swami Gulzari Sharma as required by law. Assuming, therefore, that the appointment of an election agent on the 22nd November 1951 was valid, there is nothing wrong with this appointment. It is the petitioner's case that the appointment was made on the 22nd November as stated in the evidence of Khemchandra petitioner and it is also now the stand of the learned counsel for the contesting respondent during his arguments that the appointment was made on the 22nd November. There is, therefore, no dispute left as to the appointment of Swami Gulzari Sharma as election agent having been made on the 22nd November.

As to the appointment of himself as election agent by respondent No. 3, the nomination form serial No. 3 can only be read as if respondent No. 3 had declared himself as well as Swami Gulzari Sharma as his election agents. The words "swayamko" below the line intended for name of the election agent were left intact in the declaration in serial No. 3 while Swami Gulzarilal was also shown as agent above the line. In the following line, in the declaration the word "apna" below the line, which could apply equally to both Swami Gulzari Sharma and to himself, according to the ordinary rules of grammatical construction, was left intact while the word "mera" above the line, was struck off. To my mind there was no ambiguity about the declaration and the Returning Officer was not right when he observed that the writing was ambiguous and yet held that it signified the appointment of two election agents. There seems to be no reason why the declaration as it stands, should not be taken at its face value. In this connection the belated explanation of the petitioners in the replication that it was a mere

clerical error that the words "swayam ko" in the declaration in serial No. 3 had remained without being struck off, is devoid of all force I shall consider, separately, the question whether the appointment of himself as election agent through this declaration alone can be deemed as valid. Next in importance is the evidence of respondent No. 3, himself, as to whether he had appointed two election agents or only one. In his evidence, recorded on commission, the respondent has clearly stated that he had appointed two election agents and not a single question was put to him in cross-examination, on behalf of the petitioners on this point. This evidence, is, however, assailed on the ground that the respondent appears to have colluded with respondent No. 1 and his evidence is, therefore, not reliable. This argument in my opinion, has no force in the face of the categorical admission by respondent No. 3, in his written statement, of all the main allegations made in the petition, by the petitioners, from para. 1 to 6, and of the prayer actually made, at the conclusion of the respondent's written statement, that the rejection of nomination forms serial Nos. 4 and 5 by the Returning Officer be declared as improper. Except in respect of an additional averment made by respondent No. 3, in his written statement, in regard to the time of presentation and execution of form 5-A and as to the explanation for the appointment of two election agents, his written statement entirely supports the petition. An explanation for these two averments is possible on a basis quite different from that of collusion and, considering the nature of the respondent No. 3's written statement, as a whole, I find it impossible to agree that, in so far as he himself was concerned, he made the written statement in collusion with the contesting respondent. As for his evidence on commission, it has a ring of truth about it and it is very much like the testimony of an unsophisticated person, who did not much understand the complications of the procedure of an election. His explanation, in his evidence that he had appointed two election agents because he thought his agent and he himself "would both control" is significant in this connection, as showing that he had no proper comprehension of the functions of an election agent. The respondent has signed his written statement in Hindi although it is written in the English language and, evidently, he cannot even sign in English muchless understand the language. In his evidence he has not affirmed the statement, contained in his written statement, about the time of presentation of form 5-A to the Returning Officer or as to the time when he executed it and has added that he was not the man to execute a document on one date and give a different date in the document which evidently means, that the date of execution of form 5-A Ex R-1/3 as given in it may be presumed to be correct. These statements could not have been made by respondent No. 3 in his evidence if he had been in collusion with the contesting respondent. Had he been in collusion with the contesting respondent, he would have certainly affirmed, in his evidence, the statement contained in the written statement about the time of execution or presentation of the form 5-A.

Another important piece of evidence which supports the theory as to appointment of two election agents by respondent No. 3 is an admission by Khemchand petitioner in his evidence in rebuttal. He has stated that he was aware that respondent No. 3's nomination form, Ex. D.1B (serial No. 3) had been rejected on the ground that he had appointed two election agents, that, after taking legal advice, the petitioners had decided to file a petition regarding the improper rejection of nomination forms Ex. R-1/4 and Ex. R-1/5 (serial numbers 4 and 5) only, which they considered quite in order. This means that the petitioners were satisfied that nomination forms serial No. 3 was rightly rejected on the ground of appointment of two election agents, thereln, and it was for that reason that no objection was raised in the petition specifically to the rejection of serial No. 3 or even in the subsequent pleadings of the petitioners or their counsel. In fact it was not considered necessary even to frame an issue regarding the rejection of serial No. 3 and the position was acquiesced in by the petitioners. The position that respondent No. 3 had appointed two election agents through serial No. 3 was thus tacitly accepted by the petitioners and they seem to have depended for success originally on the argument that serial numbers 4 and 5 were separate entities not affected by the rejection of serial No. 3.

It remains to deal with the evidence of Ramchandra Shastri R 1 W/2, who is an advocate, produced on behalf of the contesting respondent, although he had filed a vakalatnama on behalf of respondent No. 3, and had admittedly advised the latter regarding the proper filling up of his nomination paper. The witness has stated that he had advised respondent No. 3 to strike off the words "swayam ko" from the declaration of appointment of election agent on the nomination form but the latter said that he wanted to appoint his ownself also as his agent and that he had been advised by other lawyers not to strike off those words. A presumption is sought to be drawn from the evidence of this witness that respondent No. 3, who had engaged the witness as a vakil, on his behalf, in the present case, must be in collusion with the contesting respondent since the witness could

not have disclosed these privileged communications that had passed between him and his client, respondent No. 3, without the latter's consent. This presumption is entirely unwarranted, in my opinion, for respondent No. 3 himself has stated in his evidence, on commission, that he had not authorised Ramchandra Shastri to disclose what had passed between him and the advocate. There seems to be no reason to disbelieve this statement of respondent No. 3 who, as already pointed out by me, has supported the petition generally, in his written statement. It may be that Ramchandra Shastri himself was somehow brought round by the contesting respondent to give evidence in his favour without the knowledge of respondent No. 3. In the circumstances of the case it may even be suspected that the two inconsistent additional pleas in the written statement of respondent No. 3 that form 5-A regarding the appointment of Gulzari Sharma was executed by him at 2 P.M. on the 26th November and presented to the Returning Officer at 2-30 P.M. and that he was not aware until that time that the appointment of an election agent had to be made separately in a particular form, were introduced by the respondent's lawyer Ramchandra Shastri, in the written statement, without the knowledge of the respondent. The written statement, was in English which language seems to be unknown to respondent No. 3, who cannot even sign in English. The suspicion that a fraud may have been practised on respondent No. 3 himself is supported not only by the unusual conduct of Ramchandra Shastri but also by the fact already stated by me that respondent No. 3 himself has not, in his evidence, affirmed any of the aforesaid two statements contained in his written statement regarding the time of execution and presentation of form 5-A. I, therefore, agree that the evidence of Ramchandra Shastri has to be looked at with suspicion but the other evidence already discussed by me leads to the irresistible conclusion that respondent No. 3, had, in fact, appointed Swami Gulzari Sharma and himself as his election agents, through form 5-A read with the nomination paper serial No. 3.

As to the argument of the petitioner's learned counsel that oral evidence of appointment of himself as election agent by respondent No. 3 is excluded under the provisions of S. 91 Evidence Act, since the appointment is required by S. 40 of the Act to be in writing, I entirely agree with my learned brother Shri Shome, that section 91 of the Evidence Act cannot have the effect of excluding oral evidence as to the factum of appointment of the election agent. I need not repeat the reasoning of my learned brother on this point.

There is thus no escape from the finding that respondent No. 3 had appointed two election agents namely Gulzari Sharma and himself.

The next point for consideration is whether there was no writing evidencing the appointment, of his ownself as election agent by respondent No. 3, as required by law, and whether such an appointment even if made, in writing, was invalid since it could not have been made without revoking the prior appointment of Gulzari Sharma. The first part of this point arises from an argument advanced by Mr. B. P. Agarwal, counsel for petitioners, that under section 40 sub-section (1) of the Act a candidate can appoint an election agent only through a separate writing executed before the delivery of his nomination paper even if he appoints his ownself as such an agent. Sub-section (1) of Section 40 runs as follows:—

"Every person nominated shall before the delivery of his nomination paper appoint in writing either himself or some one other person to be his election agent."

It is argued that the writing evidencing the appointment of himself as election agent by a candidate has not only to be executed before the delivery of his nomination paper but that it should be a writing distinct from the declaration in the nomination form. Now so far as the appointment of another person as election agent is concerned there has to be an acceptance in writing by the election agent so appointed, as laid down in Section 40, sub-section (2) and a form 5-A has been prescribed under rule 11-A of the Election Rules framed under the Act, for the writing evidencing such an appointment. In regard to the appointment of himself as election agent, however, no particular form of writing has been provided and it was argued by Mr. D. M. Bhandari counsel for the contesting respondent that the writing contained in the declaration, included in the nomination paper itself, fulfils the requirements of section 40(1) in so far as the appointment of himself as election agent by Rao Uday Singh in serial No. 3 is concerned. According to all accounts and, in the very nature of things, the nomination form including the declaration was filled up before its delivery to the Returning Officer. The writing contained in the declaration in serial No. 3, was therefore, executed before the delivery of the nomination paper within the meaning of Section

49(1). I, therefore, see no reason why the declaration to be filed with the nomination form should not by itself constitute the writing required by the Act in regard to the appointment of himself as an election agent.

It will be seen that in so far as the nomination of a candidate is concerned section 33(1) only requires a nomination paper to be completed in the prescribed form and subscribed by the proposer and seconder and by the candidate himself as assenting to the nomination. The nomination paper by itself need not, therefore, include under the law, a declaration as to the appointment of the election agent under section 33, sub-section (3), however, a declaration in writing subscribed by the candidate that he has appointed either himself or another person, as the election agent, has only to accompany the nomination form. The declaration, as contemplated by the law was therefore, something distinct and separate from the nomination and it is only under rule 4 of the Election Rules that a form of nomination paper has been prescribed in Schedule II which includes the declaration required by Section 33(3) as part and parcel of the form. This declaration which bears the significant heading "Appointment of Election Agent" and which has to be filled by before delivery of the nomination paper may well be treated as a separate writing fulfilling the requirements equally of section 33 sub-section (3) and of Section 40 sub-section (1), where the candidate appoints his ownself as his election agent. Strictly speaking it is a separate writing, as prescribed by the law, only accompanying the nomination form and not necessarily forming part of it. The argument as to the necessity of a separate writing evidencing the appointment of one's ownself as election agent and as something distinct from the nomination paper, therefore, loses all force, considering the fact that the declaration itself as contemplated by the law appears to answer these requirements. It has been suggested that since the declaration, as required by section 33, has to say that the candidate "has appointed" himself or some other person as the election agent, it necessarily implies the prior appointment of the election agent and that a declaration that somebody has been appointed as agent is not the same thing as actually appointing the agent by the writing contained in the declaration. But the declaration, as prescribed in the form of nomination paper in Schedule II, says "I hereby declare that I have appointed" so and so as my agent. To my mind, the declaration is wide enough to include the prior appointment of an agent as also an appointment thereby, that is to say, it may be read as meaning "I hereby declare that I have (already) appointed so and so" and may also be read as meaning "I declare that I have hereby appointed so and so" as agent. In support of this view I may refer to the decision of the Assam Gauhati Tribunal in the Election Petition No. 48/21 of 1952 reported in *Gazette of India, Extraordinary*, dated November 11, Part I, Section I. I may also refer to the case of Gukul Prasad Versus Mr. K. M. Dhararamdhari (The Central Provinces Legislative Council, Betul District Non-Mohammedan Rural) reported at page 32 in Volume IV of Jagat Narain's Reports of Indian Election Petitions (1930-33). In that case the petitioner had "declared that he shall act as his own election agent" and the respondent sought to make out that this was no valid appointment within the meaning of old Rule ii(5), his contention being that Sub-rule (5) of Rule 11 required the declaration to be made in a particular form and that the provision being mandatory, that form must be strictly adhered to; and further that the petitioner ought to have "appointed himself as his own election agent", and not merely declared that he would act as such. The Commissioners, while accepting the contention that the rule in question was mandatory and required strict adherence, observed as follows:—

"For the purposes of such strict adherence it was not necessary that the actual words obtaining in the sub-rule should be copied down word for word..... When a candidate declares that he shall act as his own agent for the purposes of the election, such a declaration must be held to amount to an express appointment..... We see no substantial difference between an expression that he appoints himself as the agent and the expression that he declares that he shall act as his agent. The difference sought to be made out appears to be merely imaginary."

Similarly the difference sought to be made out in the present case between the declaration and the so-called form of appointment can be said to be imaginary. In any case section 33(3) of the Act only requires a declaration in writing that an agent has been appointed and not any writing anterior to the declaration as evidence of such appointment and that is quite enough for the scrutiny of a nomination paper.

Apart, however, from the question whether a separate writing evidencing the appointment of respondent 3, of his ownself as election agent was necessary under the law there is an important aspect of the case which is entirely in favour of the contesting respondent. The objection regarding the non-existence of a separate writing evidencing the appointment by respondent No. 3 of his ownself as election agent, prior to the delivery of the nomination paper, was never raised by any of the parties either at the time of scrutiny or in the present petition or even in the replication or the statement of the petitioner's counsel under O'10, R. 1. The point was raised for the first time during arguments on behalf of the petitioner and not a single question on the point was addressed to the respondent No. 3 in his cross-examination on behalf of the petitioners during his evidence on commission. The contesting respondent was not expected to prove any such writing, in the circumstances. The petitioners having raised the question that the nomination of the respondent No. 3 was improperly refused it was for them to bring out every fact which could support their stand and the mere omission on the part of the contesting respondent to secure the production of any such writing from respondent No. 3, or to bring out a reference to the writing in respondent No. 3's evidence cannot raise a presumption against the contesting respondent or in favour of the petitioners' considering the rather unusual nature of the objection and the peculiar circumstances of the case. On the contrary, the omission on the part of the petitioners to raise the point specifically in the petition or replication or even in the counsel's statement and to put any question to respondent No. 3 on the point raises a presumption against the petitioners. Respondent No. 3 was advised by so many lawyers, according to the evidence on record, and it is quite possible that they might have advised him to execute a separate writing appointing himself as election agent prior to the delivery of nomination papers and that such a writing may be in existence. In somewhat similar circumstances the Kapurthala Tribunal in its judgment in Election Petition No. 23 of 1952, reported in the *Gazette of India, Extraordinary*, dated January 20, 1953, (Suchet Singh Vs. Sardar Thakur Singh) presumed, from the omission of the petitioners to put any question to the respondent during his evidence regarding the appointment by him of an election agent, that he had, in fact, appointed an election agent in form V-A although no such form V-A was appended to any of the nomination papers of that respondent and there were merely declarations in each nomination paper, regarding the appointment of one S. Kupel Singh as election agent. In the present case there is all the more reason for presuming the appointment of himself by respondent No. 3 as his election agent, since no particular form of such appointment is specifically provided under the Act or the Election Rules.

My conclusion, therefore, on this point is that no separate writing, apart from the declaration was necessary, regarding the appointment of his ownself as election agent by respondent No. 3 and that even if such a writing was at all necessary its existence may be presumed in the circumstances of the case.

The second part of the point under consideration arises from the objection on behalf of respondent No. 2, Narain Singh that respondent No. 3 having appointed Gulzari Sharma as his election agent and the appointment not having been revoked or cancelled no other agent could be appointed by him. The objection is based partly on the well-recognised principle that, under the Act, it is permissible for a candidate to appoint only one election agent and partly on the rather extraordinary theory that once a candidate has appointed an election agent his power is exhausted and he cannot appoint a fresh agent without revoking the previous appointment. The latter theory seems to have been first propounded in the judgment of the Tribunal in the election case of the Banaras and Mirzapur Districts Mohammedan Rural Constituency 1937, U.P. Legislative Assembly (P. 154 Indian Election Cases, Sen and Poddar) wherein it was observed with reference to para. 1, part II of the Corrupt Practices Order that the power to appoint an agent was exhausted as soon as some one person was appointed and any subsequent appointment made by the candidate must be deemed to be in excess of the power given by the law and consequently invalid. This theory of exhaustion of power of appointment propounded in the Banaras and Mirzapur case was relied on and upheld by the Bombay Tribunal in its judgment in election petition No. 11 of 1952, reported in the *Gazette of India Extraordinary*, dated October 20, 1952, at page 2307 and was dissented from by the Ajmer Tribunal in its judgment in election petition No. 242 of 1952, reported in *Gazette of India, Extraordinary*, dated December 24, 1952, at page 1055. With all respect, I need only say that the theory of exhaustion of authority does not seem to be based on any general principles of law. There was only a vague reference to general principles of law in the Banaras and Mirzapur case but these principles were not defined. The theory of exhaustion of authority to appoint an agent militates against the general principle of the

law of agency, that a principal may revoke the appointment of an agent at his sweet will and that a subsequent appointment of an agent impliedly terminates the previous appointment of another agent.

To hold that a candidate cannot make a subsequent appointment of another election agent after having made a prior appointment of a different person would lead to the extraordinary result that no nomination paper could be rejected on the ground of appointment of more than one election agent by the candidate, although under the law only one election agent can be appointed. I may say here that this limitation of power to appoint only one election agent is clear enough from the language of section 33 sub-section (3) itself and from foot-note No. 6 to the prescribed form of nomination paper and declaration prescribed under the Act in schedule II and the principle is reaffirmed in Section 40. In my opinion, therefore, this objection of respondent No. 2, which was also taken up by the petitioner's learned counsel during arguments, has no force and the appointment of his ownself as election agent by respondent No. 3 in nomination form, serial No. 3, cannot be held to be invalid on that ground.

The next point for consideration is whether the appointment of two election agents by respondent No. 3, as shown by his nomination paper serial No. 3 has any effect on his remaining nomination papers serial Nos. 4 and 5 or in other words whether the validity of these two nomination papers could be considered quite independently of serial No. 3. On behalf of the petitioners it was urged that every nomination paper was to be considered as a separate entity and that in so far as serial Nos. 4 and 5 were concerned there being nothing wrong with them and there being the appointment of only one agent Swami Gulzari Sharma in both of them they could not have been rejected. Reliance was placed on the decision of the Saurashtra Tribunal in the case of Thakur Gokal Das Hirji Vs. Ballabh Das (Election petition No. 3 of 1952) reported in the *Gazette of India Extraordinary* dated December 24, 1952 and of the Bombay Tribunal in the case of Shri Moti Singh Vs. Ishwar Das Election petition No. 11 of 1952 reported in the *Gazette of India Extraordinary* dated October 20, 1952.

In the Bombay case the petitioner had presented two nomination papers on 23rd November 1951 in both of which he had made a declaration appointing one Amar Singh Himat Sang as the election agent and two more nomination papers on the following day in the first of which he had appointed one Pandye Natvarlal as his election agent while in the second he had declared that he had appointed himself as his election agent. All the nomination papers were rejected by the Returning Officer on the ground that the petitioner had appointed more than one election agent which was not permissible under section 40 read with section 33(3). The tribunal held that there was no authority for the proposition that all the nomination papers of a nominated candidate should be scrutinised together or collectively. The Mainpuri and Etah District Mohammadan Rural constituency case 1946 U.P. Legislative Assembly, reported at page 530 of Indian Election cases by Sen and Poddar wherein it was held that "simultaneous presentation of multiple nomination papers each containing declaration of appointment of different election agents by a candidate invalidates all the nomination papers" was distinguished by the tribunals on the ground that in the case before them there was no simultaneous presentation of nomination papers. The tribunal accepted as correct the view taken in the case of the Benares and Mirzapur District Mohammadan Rural constituency wherein it was held that "the appointment of two different election agents by a candidate on two separate nomination papers does not invalidate his nomination". The tribunal then proceeded to hold, on the authority of the Razza Mohammadan Rural constituency case 1937 (page 716. Sen & Poddar) that appointment of two different election agents in two sets of nomination papers is not illegal nor does the invalidity of one affect the other and to observe that every nomination paper is a separate unit and is to be scrutinised separately. Finally the tribunal upheld the principle of exhaustion of authority to appoint an election agent, laid down in the Benares and Mirzapur case, which I have already discussed above.

Having fully considered the case law on the point, I have no doubt that the ruling in the Benares and Mirzapur case, on which the judgment of the Bombay Tribunal is mainly based is not applicable to the facts of the present case, perusal of the judgment in the Benares and Mirzapur case shows that it was based on sub-rule (6)(a) of rule 4 U.P. Legislative Assembly Electoral rules which provided for a declaration "that the candidate has appointed or does thereby appoint as his election agent.....". In such a case the time of submission of the nomination paper containing the declaration could be taken as the time of appointment of an agent. It was on that point that the decision of the Benares Mirzapur case was mainly

based. In the case of simultaneous presentation of nomination papers, however, it could not be determined which was delivered first and therefore all the nomination papers had to be rejected where there was appointment of different agents as in the Mainpuri and Etah case.

The change of law in the present Act in regard to the form of declaration appears to have been missed in the Bombay case. In the Saurashtra case the decision in the Benares Mirzapur case appears to have been accepted as good law, without a full consideration of the merits of that case and it also seems that the tribunal depended on Sen and Podder's summary of the Benares case judgment and not on the full report contained in Doabla's Indian Election cases. But even the Saurashtra Tribunal has held in paras. 7 and 8 of its judgment at page 1046 that each nomination paper is not to be treated as a separate entity and that all the nomination papers can be looked into in relation to each other to a certain extent. Even the decision in the Razza Mohammadan Rural Constituency case was disapproved.

In the Ajmer case, already referred to, one nomination paper was filed by a candidate on one day appointing one Jugal Kishore as agent and two more nomination papers, on the following day, in both of which he had appointed himself as agent. In its finding on issue No. 1, at page 1056 and 1057, the Tribunal held that the nomination papers could not be treated as separate entities. The Tribunal also disapproved the principle of exhaustion of power of appointment of an election agent laid down in the Benares Mirzapur case. On a consideration of the case law and for reasons already explained by me I respectfully agree with the view taken by the Ajmer Tribunal that each nomination paper cannot be taken as a separate entity and that all the nomination papers filed by a candidate have to be looked into to a certain extent and for certain purposes during the scrutiny. That all the nomination papers filed by a candidate have to be considered collectively to a certain extent also appears from the language of section 36 sub-section (1) and sub-section (7)(b).

I may also refer to the ruling in A.I.R. 1941, Calcutta page 130 (Mohamed Hossain V. Mohammed Raffique), which was based on election rules similar to those under the present election law and in which all nomination papers filed by a candidate were considered together and it was held that the nomination was liable to be rejected on account of the appointment of more than one election agent, appearing from the nomination papers considered collectively. A similar view was taken in the Balla case reported at p. 27 in Hammond's Election cases, Vol. I

I, am, therefore, unable to agree that the declaration as to the appointment of two election agents in nomination form serial No. 3 of respondent No. 3 has no effect on the validity of the respondent's remaining two nomination papers, although it is true that taken by themselves, these two nomination papers serial Nos. 4 and 5 seem to be quite in order. I do not also agree, as already stated by me, that the appointment by respondent No. 3 of his own self as his election agent through serial No. 3 could be deemed to be invalid and infructuous or that the respondent should be deemed on, technical grounds, to have appointed only one agent, Swami Gulzari Sharma, in all the nomination papers although in fact he had appointed two agents. The result is that respondent No. 3's nomination papers serial Nos. 4 and 5 could have been rejected on a consideration of all his three nomination papers on the ground that he had in fact appointed two election agents.

The last point for consideration under issue No. 4 is the one raised for the first time on behalf of the contesting respondent during arguments. It was urged by Mr. D. M. Bhandari that the petitioner's case being that form V-A, Ex.R-1/3 regarding appointment of Swami Gulzari Sharma as election agent by respondent No. 3 having been executed on the 22nd November 1951, and the nomination forms serial No. 3, 4, and 5 having all been admittedly subscribed on the 26th November the appointment of even Gulzari Sharma as agent was invalid under section 40 of the Act. The argument is that under section 40 only "a person nominated as a candidate" can appoint an election agent in writing and since respondent No. 3 had not been nominated as a candidate till the 26th November, the appointments by him of his election agent on the 22nd November in form V-A was void. There are conflicting decisions on the question whether S. 40 can be invoked in connection with the scrutiny of nomination papers and while I am of the opinion that for the purposes of scrutiny the declaration referred to under section 33(3) alone is quite enough yet form No. V-A having been actually filed with the nomination paper serial No. 3, the objection raised by Mr. Bhandari has undoubtedly force. The mere fact that the objection was not raised previously and there was no issue on the point, cannot in my opinion prevent the tribunal from considering the

effect of a legal flaw in the appointment of the election agent which has been brought to the tribunal's notice. I am unable to agree with my learned brother Shri Shome that the words "nominated as a candidate" in section 40 have no reference to the time at which a candidate is to appoint an election agent. The definition of a candidate in section 79 (b) to my mind, does not weaken the force of the objection. According to the definition itself the word "candidate" includes a person who has been duly nominated as a candidate at any election and such a person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. If the intention had been, in section 40, merely to indicate the person who may ultimately be nominated as a candidate then the mere use of the word "a candidate" without the qualifying words "nominated as a candidate" would have been sufficient to indicate a person who may be nominated or who may begin to hold himself out as a candidate with the election in prospect. To my mind, therefore, no valid appointment of an election agent can be made under section 40, by a candidate before his nomination paper has been actually subscribed by the proposer and seconder and the nomination has been duly assented to by the candidate himself. I have gone through section 44 and Chapter VIII Part V of the Act and Rules 111 and 112 of the Election Rules, 1951, and have also perused the prescribed form of return of election expenses but I find nothing therein to indicate that the functions of the Election agent shall be deemed to begin from before the nomination of a candidate. In my opinion the formal functions of an election agent can be deemed to begin only after he has been duly appointed by a nominated candidate. The argument that any such interpretation of S. 40 as could have the effect of imposing a limitation of time on the power of appointment of an election agent would render the election work of the candidate before his nomination impossible is not convincing, to my mind. This tribunal cannot be deterred from placing a natural interpretation on the language of section 40 by any considerations of its effect generally on the election work of a candidate through his agent before the candidate's nomination. In this connection I may refer to the old election law in U.P. The time and manner of the appointment of an Election agent in U.P. was governed by Rule 4, sub-rule 6(a) (U.P. Rules 1936) which left no doubt that the appointment could only be made on the date fixed for the nomination of candidates, by means of a nomination paper containing the necessary declaration. It was on this rule that the decision of the Benares Mirzapur case was based, *vide* page. 199 bottom, Vol. II of Doabla's Indian Election Cases. And yet it cannot be said that, in framing the U.P. Rules in question, the legislature concerned had not foreseen the difficulties of election work arising from the limitation of time as to appointment of election agent. The present election law is more liberal in this respect, since section 40 permits the appointment of an election agent at any time before delivery of nomination paper but after the nomination. On a strict interpretation of section 40, therefore, the appointment of Gulzari Sharma as agent on 22nd November was invalid and the nomination forms serial Nos. 4 and 5 also deserved to be rejected on that ground. Judged from any angle, therefore, the nomination of respondent No. 3 was liable to be refused. The answer to the issue is, therefore, in the affirmative.

In view of my above findings, no finding is necessary on issue No. 2. The remaining issues are not pressed. I would then reject the petition and since there is considerable evidence that the petition is inspired by malice, the contesting respondent shall get his costs including Rs 100 as counsel's fee.

(Sd.) A. N. KAUL,

Per Hon. Sharma, Chairman.—I have been the judgments of both my learned brothers Shri P. L. Shome and Shri A. N. Kaul. I need not go elaborately into facts, as they have been given by both my learned brothers in their judgments. I may, however, state briefly that this election petition arose out of the rejection of the nomination papers of Rao Udai Singh, respondent No. 3. He filed three nomination papers, serial Nos. 3, 4 and 5, Exs. D 1/B, R 1/4 and R 1/5 respectively, for the Rajasthan Legislative Assembly from the Nim-ka-Thana "C" Constituency. These nomination papers were filed on the 26th of November, 1951, but at the scrutiny all the three nomination papers were rejected on the 29th November, 1951. Ex. D 1/B was rejected on the ground that the word "Swayam ko" was not struck off from the declaration of appointment of agent in the nomination paper, while the word "Mera/Apna" had been struck off, which was ambiguous and signified that the candidate had appointed himself as well as Swami Gulzari Sharma as his election agent, while under the law he could appoint only one, either himself or another man as his agent, and the other two nomination papers were rejected on the ground that Form 5-A for the appointment of election agent

was not filed along with the nomination papers. The petitioners Din Singh son of Lakh Singh and five others, who were voters in the Nim-ka-Thana "C" Constituency to the Rajasthan Legislative Assembly filed this petition for having the election declared void on the ground that the nomination papers were improperly rejected, and their rejection materially affected the result of the election.

The real contesting respondent in the case is Shri Kapil Deo, respondent No. 1. He asserted that the nomination papers were validly rejected, and has also taken a plea, among others, that Rao Udal Singh had appointed two election agents, that is Shri Gulzari Sharma and his own self, which invalidated all his nomination papers.

Of the seven issues, which were framed, issues Nos. 3, 5, 6 and 7 were not pressed by the learned counsel for the contesting respondent, and they have been decided against him by my learned brothers. Issues Nos. 1, 2 and 4, which were pressed, are as follows:—

1. Whether any of the nomination papers, serial Nos. 4 and 5, filed by the respondent No. 3 was improperly rejected on the ground that it was not accompanied by the appointment of election agent in Form 5-A?
2. If the answer to issue No. 1 is in the affirmative, was the result of election materially affected by that rejection?
4. Whether the respondent No. 3 appointed two election agents instead of one, and if so, whether the nomination papers serial Nos. 4 and 5 were liable to rejection also on this ground?"

So far as issue No. 1 is concerned both my learned brothers are agreed that it should be decided in favour of the petitioner. I entirely agree with them, because it has not been shown to us that it was necessary for a candidate to attach from 5-A along with every nomination paper in case there are more than one, or in fact with any nomination paper at all.

I now take issue No. 4, on which my learned brothers have disagreed.

Issue No. 4.—It was argued by Mr. D. M. Bhandari on behalf of Shri Kapil Deo (hereinafter called as the contesting respondent) that Rao Udal Singh appointed two election agents, that is his own self and Shri Gulzari Sharma. Section 40 as well as section 33 of the Representation of the People Act 1951 (hereinafter to be called as the Act) provides that a candidate shall either appoint his ownself as an election agent or some one other person. The law, therefore, requires that only one person can be appointed as election agent and not more than one, and in case more than one are appointed, it cannot be said that the provisions of section 33(3), which are mandatory, have been fulfilled. On behalf of the petitioners it was argued by Mr. B. P. Agrawal that first of all there was no evidence that two election agents were appointed, and even in case they were in fact appointed, the appointment of Rao Udal Singh himself as his agent was invalid, as no writing about the appointment as required by section 40 of the Act has been proved in this case. It was further argued that even if two agents were appointed, Exs. R.1/4 and R.1/5 could not be rejected as the declaration in them was only with respect to the appointment of one election agent, that is, Gulzari Sharma.

Shri P. L. Shome has agreed with the contention of the petitioners, and has held that neither it is proved as a fact that two election agents were appointed by Rao Udal Singh, nor even if it be proved as a fact that two election agents were appointed, the appointment of Rao Udal Singh can be said to be legally valid, as no writing was made by him about his own appointment as required by section 40. On this finding he has not gone into the second contention of the contesting respondent that if two election agents are appointed, even those nomination papers in which declaration has been made about a single agent are invalid.

Shri A. N. Kaul has agreed with the contesting respondent, and he has held that the appointment of two election agents by Rao Udal Singh was fully proved, and that there were writings as required by section 40 of the Act regarding the appointment of both the agents. In the case of Rao Udal Singh himself he has held that no separate writing was necessary, and the declaration itself in the nomination paper amounted to appointment.

I have very anxiously considered over the matter, as both my learned brothers have given very able and elaborate judgments. To my mind, however, it appears that the view expressed by Shri A. N. Kaul is correct. So far as the question of fact is concerned whether Rao Udal Singh appointed two election agents, there is the declaration in the nomination form Ex. D.1/B, which shows that he appoint-

ed himself as well as Shri Gulzari Sharma as election agents. It was not necessary for him to write his own name in the declaration form as the word "Swyamko" was clear, and he did not strike it off. My brother Shri P. L. Shome is of opinion that probably it was only accidental that the word "Swyamko" was not struck off. With all respect to my learned brother, first of all there is no warrant for making such a supposition, but even if there were any doubt, it has been fully set at rest by the evidence of Rao Udal Singh, who was examined on behalf of the contesting respondent, and has clearly deposed that he appointed two election agents, that is his ownself and Shri Gulzari Sharma. No question was put to this witness in cross-examination on behalf of the petitioners challenging this statement of his. The petitioners themselves took no ground in their petition that the nomination paper Ex. D.1/B was wrongly rejected on the ground that two election agents were appointed by Rao Udal Singh. My learned brother Shri A. N. Kaul has given full reasons for believing the statement of Rao Udal Singh and for coming to a finding on the basis of his statement along with the declaration in the nomination form Ex. D.1/B that two election agents were in fact appointed by Rao Udal Singh.

Next coming to the question whether the appointment of his ownself by Rao Udal Singh is invalid because he did not make any separate writing apart from the declaration form that he had appointed his ownself as his election agent, great stress was placed by Shri B. P. Agrawal on behalf of the petitioners on the words "appoint in writing either himself or some one other person to be his election agent", which occur in section 40 of the Act. This section requires that every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of section 33 or under that sub-section read with sub-section (4) of section 39, as the case may be, appoint in writing either himself or some one other person to be his election agent. This is sub-section (1) of section 40. By sub-section (2) it has been provided that when a candidate appoints some person other than himself to be his election agent he shall obtain in writing the acceptance by such person of the office of such election agent. Then there is a form 5-A in Schedule I of the Rules framed under the Act. This gives the form for the appointment of election agent, if the candidate appoints somebody other than himself his election agent. There is no form given for the appointment of his ownself as an agent by the candidate. Any writing, therefore, which shows that the candidate appointed his ownself as his agent would be sufficient. The writing should be before the delivery of the nomination paper. In the present case, the declaration was made in the nomination paper before its delivery. So it can be justifiably said that it was a writing made before the delivery of the nomination paper. It clearly shows that Rao Udal Singh appointed his ownself as his agent, besides Shri Gulzari Sharma, in whose case the appointment has also been made in form 5-A as required by the Rules. It was argued that it is simply a declaration saying that appointment was made at some earlier stage. As a matter of fact appointment may be made orally much before the writing required by section 40. But the appointment will take effect only when the writing has been made as required by section 40. So to say that the appointment was *de facto* made before the declaration in the nomination form which would not invalidate it. Of course, it would not have had any legal force until the writing had come into effect. So the appointment of his ownself by Rao Udal Singh legally came into effect from the time he made the declaration in the nomination form. I do not find anything in the Act to warrant the view that even in the case of a candidate appointing his ownself as his election agent there should be two writings, one by way of declaration and the other by way of appointment. If any form were prescribed, even in the case of the candidate appointing his ownself as his election agent, this argument would have had force, but as no form is prescribed, any writing which shows that the candidate has appointed himself as his election agent would suffice. The declaration form shows it, and to my mind it was quite sufficient for the valid appointment of his ownself as his election agent by Rao Udal Singh. This view has been taken in a recent case under the Act by the Assam Election Tribunal in the case of Hazi Nasimuddin and Sivaprasad Sarma vs. Dandiram Dutta and others (Election Petitions Nos. 21 and 48 of 1952) reported in the Gazette of India Extraordinary, Part I—Section 1, dated the 11th November, 1952, page 2396 b. Of course the judgment is brief, and the reasons are not elaborately given, but the view to my mind is perfectly correct.

Coming to the question whether if two agents were appointed, all the nomination papers would be invalid even though in some of them the declaration is made about a single agent. My learned brother Shri A. N. Kaul has referred to a number of authorities, and to a recent case decided by the Ajmer Tribunal, Election Petition No. 242 of 1952, Lala Mengh Raj vs. Shri Bhimandas and others, reported in the Gazette of India, Extraordinary, Part II—Section 3, No. 177, dated

December 24, 1952, at page 1055. The Tribunal has given very good reasons for holding; that if more than one agent has been appointed all the nomination forms become invalid. Authorities under the old Act have been reviewed and on a full consideration of them the Tribunal came to this finding. I need not repeat the arguments given by the Tribunal or by my learned brother Shri A. N. Kaul. I am of the opinion that the nomination papers cannot be altogether treated as quite separate entities for this purpose.

Section 33(3) of the Act as well as section 40 both make it clear that only one election agent should be appointed. The appointment of more than one election agent is, therefore, against the mandatory provision of law, and this constituted a good ground for the rejection of all the nomination papers of Rao Udai Singh. It cannot, therefore, be said that the nomination papers of Rao Udai Singh were altogether improperly rejected, although the ground on which nomination papers Exs. R.1/4 and R.1/5 were rejected has not found favour with this Tribunal.

The petition, therefore, fails.

I also agree with the order of costs made by my brother Shri A. N. Kaul.

(Sd.) KUMAR K. SHARMA.

BY THE TRIBUNAL

In view of the judgment of the majority, the petition is dismissed with costs to the contesting respondent including Rs. 100 as counsel's fee.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) P. L. SHOME, *Member.*

(Sd.) A. N. KAUL, *Member.*

[No. 19/105/52-Elec.III/9155.]

S.R.O. 1202.—Whereas the election of Shri Shunker Shantaram More of Shivaji Nagar, Poona, as a member of the House of the People from the Sholapur constituency of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Krishna Bhimrao Antrolikar of 444 South Kasba, Sholapur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, POONA, AT POONA
ELECTION PETITION No. 97 OF 1952

CORAM:

Shri Pramod C. Bhat, B.A., LL.B.,—Chairman.

Shri Y. K. Ghaskadbi, B.A., LL.B.,

Shri S. B. Jathar, B.A., LL.B.—*Members of the Election Tribunal.*

Krishnaji Bhimrao Antrolikar, residing at Sholapur—*Petitioner.*

PLEADERS:

Shris H. V. Pataskar and K. B. Menavalikar.

Versus

1. Shankar Shantaram More, residing at Poona (Pleader: Shri A. G. Wagholiikar).
2. Bandurang Nathoji Rajbhoj of Poona (Pleader: Shri S. V. Gadgil).
3. Tayappa Hari Sonavane of Bombay (Pleader: Shri B. M. Gupte).
4. Dr. Vishnu Ganesh Valshampayan of Sholapur (Pleader: Shri G. G. Karnik).
5. Bhagat Jayaram More of Pandharpur.
6. Madivalappa Bandappa Kadadi of Sholapur.
7. Tulshidas Subhanrao Jadhav of Sholapur (Pleader: Shri R. D. Sawal).

8. Ganpat Papayya Belpawar of Sholapur—*Respondents.*

The District Government Pleader Shri B. M. Tarkunde present for the Advocate General, Bombay.

A PETITION UNDER SECTION 100 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951.

JUDGMENT

This is a petition praying that the election of the first respondent to the House of the People from Sholapur Constituency be declared to be void. The main grounds on which the election of respondent No. 1 is challenged are three: firstly, that S. S. Salunke, who was the Secretary of the Election Propoganda Committee of the Peasants' and Workers' Party for the Sholapur District and on behalf of which party, respondent No. 1 contested the election, published a leaflet (Ex. 107) falsely stating that (1) a delegation had waited upon Pandit Nehru to invite him to come down to Sholapur to support the candidature of the petitioner, (2) Pandit Nehru did not give an interview to the delegation but sent a message through his Secretary to the effect that the petitioner who was a sitting member of the Bombay Legislative Assembly had done nothing for the cause of labour of Sholapur, which is predominantly a labour area but on the contrary, had let it down and (3) Mr. Shankarrao More should be allowed to be returned to the House of the People, secondly, that the contents of the said leaflet were reproduced verbatim in the Lokseva of 31st December 1951 (Ex. 182), which is a Marathi Weekly published from Sholapur by Mr. T. S. Jadhav, respondent No. 7, who was a substitute candidate (for Mr. S. S. More) of the Peasants' and Workers' Party; thirdly, that the said Mr. Salunke also published and distributed a poster (Ex. 166) stating that Mr. Jajuji, the Karmaveer of Sholapur, had advised that the petitioner should be defeated if Goondaism is to be eradicated in order to achieve purification of the Congress; that the said statement meant and was understood by all concerned to mean that the petitioner was a Goonda and that, therefore, his defeat was desirable. It was alleged that the said poster did not bear on its face the name and address of the printer thereof, and that, therefore, the issuing of such a poster was an illegal practice within the meaning of Section 125(3) of the Representation of the People Act, 1951. It is alleged by the petitioner that the publication of the leaflet and the poster by the said Mr. S. S. Salunke was in his capacity as an agent of the respondent No. 1, that the reproduction and publication of the said leaflet in the Lokseva by Mr. T. S. Jadhav was also as an agent of Mr. More. It is further alleged by the petitioner that in any event, the publication of the leaflet and the poster and reproduction of the former in the Lokseva were with the connivance of the first respondent and that this amounted to a major corrupt practice within the meaning of Section 123(5) of the Representation of the People Act, 1951. The petitioner further alleged that the election of the first respondent had been procured or the result of the election had been materially affected by a corrupt practice; that the first respondent was also guilty of having committed an illegal practice.

2. Admittedly, the petitioner was a Congress candidate and respondents Nos. 1 and 7 were candidates of the Peasants' and Workers' party. Respondents Nos. 2 to 8 were impleaded in the petition as they were also candidates at the said election, although some of them withdrew therefrom. The 3rd, 7th and 11th of January were the dates on which the election was actually held, the nomination papers with regard to the election having been filed on 21st November 1951. The result of the election was published on 25th January 1952. The second respondent P. N. Rajbhoj was declared to have been elected for the reserved seat for the Scheduled Caste. These facts are not in dispute.

3. The petition was filed a little later than when it should have been filed, but the delay was condoned by the Election Commission and the petition was not dismissed on that ground by this Tribunal as well. A separate order in this behalf is recorded at Ex. 64. Some other contentions regarding the particulars etc. were also raised and the issues with regard thereto were also disposed of by the said order. It is not, therefore, necessary to consider them again.

4. The first respondent, who is the really contesting respondent, by his written statement (Ex. 23) denied the contents of the petition and contested that (1) the petition was untrue, (2) there was no election propoganda committee appointed by the said Peasants' and Workers' Party, (3) S. S. Salunke was not the Secretary thereof, (4) nor did he publish the alleged leaflet, (5) the petitioner did not know anything about the publication thereof, (6) Mr. T. S. Jadhav was not a substitute candidate, (7) it is a fact that a delegation went to invite Pandit Jawaharlal Nehru to visit Sholapur, (8) Pandit Nehru did not visit Sholapur, (9) the petitioner had

done little for labour, (10) the Weekly Lokseva had no connection with the Peasants' and Workers' Party, (11) the respondent had no hand either in the issue or publication of the impugned leaflet and the poster or its reproduction, (12) Jajuji belonged to a different wing of the Congress, (13) Jajuji's allegations cannot be made a grievance against this respondent, (14) the petitioner could not be understood to be a Goonda in its literal sense, (15) the petitioner was understood to be a Goonda is incorrect (16) neither Salunke nor Jadhav was an agent of the respondent of any kind whatever, (17) neither ever acted with his consent or knowledge or connivance, (18) Tulshidas Jadhav was out of Sholapur at the time of the reproduction of the leaflet in the Lokseva Weekly of 31st December 1951, (19) he had no hand in the publication thereof, (20) the respondent himself was on tour at the relevant period and did not visit Sholapur during the said period, (21) he never came across the said leaflet or poster, (22) Lokseva has too meagre a publication to sway the public, (23) the list of particulars was neither full nor sufficient and specific, (24) the leaflet and poster were effectively counteracted. The respondent further denied, (25) the contents of the leaflet and (26) its publication in Lokseva of 31st December 1951, (27) all knowledge thereof, (28) publication and distribution of the poster by Shri S. S. Salunke, (29) the contents of the poster, (30) his connivance, (31) and the fact that the election was procured or the result thereof was materially affected by any corrupt or illegal practice, (32) the commission of any corrupt or illegal practice under Section 123(5) or 125(3) of the Representation of the People Act. The petitioner challenged (33) the genuineness both of the leaflet and the poster and alleged (34) that the petitioner must prove the falsity of both. He also generally denied the contents of the petition and alleged that the same were mischievous in import and malicious of purpose.

5. Respondent No. 7, T. S. Jadhav, filed his written statement at Ex. 27 generally supporting respondent No. 1, in material particulars and alleging that at the time of the publication of the leaflet in Lokseva of 31st December 1951 he was out of Sholapur and had no knowledge thereof, nor did he connive at it. He further alleged that the Lokseva had a small circulation of about 300 copies.

6. Respondent No. 2 filed his written statement at Ex. 42. He stated that he had no concern with the alleged leaflet or poster and that he had no hand in the circulation of the same or anything to do with the publication or production thereof.

7. Respondent No. 3 in substance supported the petition. He alleged that the corrupt practice alleged in the petition equally affected his chances of success and that the illegal practice alleged in paragraph 6 of the petition vitiated the election of respondent No. 1. He prayed that the election of respondent No. 1 be declared void and he be declared as elected.

8. Respondent No. 4 by his written statement (Ex. 22) stated that he had no interest in the result of the petition and that he should be paid his costs.

9. Respondents Nos. 5, 6 and 8 do not appear to have filed any written statement and the petition has proceeded *ex parte* against them.

10. From the contentions abovesaid, the following issues were raised at Ex. 27.

ISSUES

1. Does the petitioner prove that S. S. Salunke was the Secretary of the Election Propaganda Committee of the Peasants' and Workers' Party?
2. Does petitioner prove the contents of the alleged leaflet referred to in the list of corrupt and illegal practices and that they are false?
3. Does petitioner prove that S. S. Salunke published the said leaflet and that he did so as an agent of respondent No. 1?
4. Does petitioner prove that the said leaflet was reproduced in Lokseva Weekly with the knowledge or consent of respondent No. 7?
- If yes, was it published by respondent No. 7 either as an agent of or with the connivance of respondent No. 1 as alleged?
5. Does petitioner prove the contents of the alleged poster? Does he prove that S. S. Salunke published and distributed the said poster and that he did so as an agent of or with the connivance of respondent No. 1 as alleged?
6. Does petitioner prove that the contents of the said poster were false and conveyed the false suggestion as alleged in para. 6 of the petition?

7. Can the petitioner be allowed to contend against the said poster in view of the fact that the falsity of its contents and the alleged suggestion as well as its publication and distribution have not been relied upon in the list of corrupt and illegal practices accompanying the petition?
8. Do the allegations in the petition and the accompanying list of corrupt and illegal practices constitute a major corrupt practice within the meaning of Section 123(5) of the Representation of the People Act, 1951?
9. Does petitioner prove that the alleged poster did not bear on its face the name and address of the printers thereof as alleged?
10. Does it constitute an illegal practice within the meaning of Section 125(3) of the Representation of the People Act, 1951?
11. Does petitioner prove that the election of respondent No. 1 has been procured or result of the election has been materially affected by a corrupt practice as alleged?
12. Does petitioner prove that respondent No. 1 has committed any corrupt practice as alleged? Can he be allowed to urge this in the absence of any particulars in that regard in the list of corrupt and illegal practices accompanying the petition?
13. Does petitioner prove the averments in para. 8 of the petition?
14. Are they sufficient to condone the delay?
15. Is the petition barred by virtue of Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951?
16. Does petitioner prove that he deposited Rs. 1,000 in the Reserve Bank of India in favour of the Secretary to the Election Commission and enclosed the receipt in that regard with the petition as required by Section 117 of the Representation of the People Act, 1951? If not, is the petition maintainable?
17. Do respondents Nos. 1 and 7 prove that the said leaflet or the matter that appeared in Lokseva Weekly was effectively counteracted by the petitioner and his party by issuing and widely publishing leaflets and statements as alleged?
18. Is the petition maintainable in view of non-production of the alleged leaflet, poster and issue of Lokseva Weekly with the petition?
19. Are the particulars of the alleged corrupt and illegal practices in the list accompanying the petition full and sufficient in law? If not, is the petition maintainable?
20. Are the petition and the list of corrupt and illegal practices accompanying it signed and verified as required by Section 83(1) and (2) of the Representation of the People Act, 1951? If not, is the petition maintainable?
21. Is respondent No. 7 a necessary party to the petition?
22. Does the petitioner prove that a delegation did not wait upon Pandit Nehru and that contents of the leaflet are not true as alleged?
23. What order?

Issues Nos. 13, 14, 15 and 20 were tried as preliminary issues.

11. Our findings on the said issues are:—

On issue No. 1—In the negative.

On issue No. 2—In the affirmative on the first part; in the negative on the second part.

On issue No. 3—In the negative on part one; part two does not survive, but if necessary in the negative.

On issue No. 4—In the negative on both the parts.

On issue No. 5—In the affirmative on the first part; in the negative on the second and third parts.

On issue No. 6—In the negative on both parts.

On issue No. 7—In the affirmative.

On issue No. 8—In the negative.

On issue No. 9—In the affirmative.

On issue No. 10—In the affirmative.

On issue No. 11—Does not arise, but if necessary in the negative.

On issue No. 12—In the negative on the first part and in the affirmative on the second to the extent mentioned in the order.

(Issues Nos. 13, 14 and 15 as decided by Ex. 64).

On issue No. 16—First part: Rs. 1,000 deposited in the Reserve Bank of India although not in favour of the Secretary of the Election Commission.

Second part: The receipt enclosed as required by Section 117 of the Representation of the People Act, 1951.

Third part: Does not survive; if necessary in the affirmative

On issue No. 17—Does not arise, but if necessary in the negative.

On issue No. 18—In the affirmative.

On issue No. 19—First part in the negative.

Second part in the affirmative.

On issue No. 26—As decided by Ex. 64.

On issue No. 21—Not pressed.

On issue No. 22—In the negative on both parts.

On issue No. 23—As per final order.

REASONS

12. It is a well-recognised principle of the assessment of evidence in election cases that the evidence must be free from all reasonable doubt. If there is such a doubt, its benefit must be given to the respondent. No suspicion, however strong, can replace proof. Besides, the respondent No. 1 who is sought to be unseated is elected by the people's mandate and in a democracy such mandate cannot and should not be lightly set aside. We will, therefore, consider the case bearing these principles in mind.

13. Issues Nos. 13, 14, 15 and 20 were heard and disposed of as preliminary issues by Ex. 64. It is not necessary, therefore, to consider them here. We will now deal with the remaining issues.

14. We think it will be convenient to treat these issues in the following groups in accordance with the subject-matters thereof. Issues Nos. 2 and 22 are issues relating to the leaflet (Ex. 167) translation whereof has been produced with the petition and marked 'A'. These issues shall be treated as *Group I*. Issues Nos. 5 first and second parts, 6, 7, 9 and 10 refer to the poster (Ex. 166) translation whereof has been produced with the petition and marked 'B'. These issues may be grouped together as *Group II*. Issues Nos. 1, 3, and third part of issue No. 5 deal with the character of S. S. Salunke as agent of respondent No. 1 in the alleged issue and publication of Exs. 166 and 167 and distribution of Ex. 167 by him. Issue No. 12 has reference to the corrupt practice with reference to these two exhibits. These issues may, therefore, be conveniently treated as *Group No. III*. Issue No. 4 deals with the reproduction of the contents of the leaflet (Ex. 167) in the Lokseva issue (Ex. 182) dated 31st December 1951. It shall, therefore, be treated by itself as *Group No. IV*. Issue Nos. 17 and 11 have reference to the effects of the leaflet Ex. 167 its reproduction in the Lokseva issue Ex. 182 and the poster Ex. 166 and the steps to counteract the same. They may, therefore, be conveniently considered in *Group No. V*. Issues Nos. 8, 16, 19 and 21 are issues on questions of law. They may, therefore, be considered together in *Group No. VI*.

15. *Group No. I. Issues Nos. 2 and 22.*—The issues in this group refer to matters concerning the leaflet Ex. 167. The points which require consideration in these issues are: (a) whether the petitioner proves the contents of the said leaflet; (b) whether he proves that they are false; and (c) whether the petitioner proves that a delegation did not wait upon Pandit Jawaharlal Nehru.

(a) The petitioner has called for the original of the leaflet (Ex. 167) from the Lokseva Press by Ex. 120, item No. 2. But Mr. Jaysing Pawar (Ex. 153) and S. S. Salunke at Ex. 172 stated that no manuscript thereof was available as it was not published or printed by them. The leaflet, therefore, will go in as secondary evidence of the original. The contents of the leaflet (Ex. 167) must, therefore, be held to be proved.

(b) and (c) may conveniently be dealt with together. The point (c) is actually covered in point (b), but as a separate and distinct issue therewith is raised (issue No. 22), we consider the same separately here. Ex. 167 in substance states the following facts, *viz.*, that (i) a deputation waited on Pandit Jawaharlal Nehru to bring him to Sholapur to strengthen the candidature of the petitioner and Chhanusing, but the same was not given an interview by Pandit Jawaharlal Nehru; (ii) the latter through his secretary sent a message to the effect that it is not his desire that Congress alone should be in power, the petitioner and Chhanusing have not done any work of public welfare during the last five years and that, therefore, he was not going to Sholapur and (iii) respondent No. 1 be elected. The burden of proving that the contents of the leaflet are false is on the petitioner. He has examined Pandit Jawaharlal Nehru on commission at Ex. 226. He states in his evidence "I went to Poona...I did not visit Sholapur in connection with the Election campaign.....I have no such recollection that any such deputation sought my interview...Almost every constituency in Maharashtra as elsewhere wanted me to visit it.....I am sure there must have been some workers from Sholapur in that meeting (at Poona).....Probably, the Sholapur workers had written to me to visit that constituency, but I have no recollection. I cannot remember if any individual from Sholapur....." It will thus appear from the evidence of Pandit Jawaharlal Nehru that he is not definite about a deputation waiting upon him to take him to Sholapur in connection with the Election Campaign otherwise—and naturally with his hurricane activities he cannot be. On the contrary, it appears from the evidence of Pandit Nehru that attempts were being made to bring him to Sholapur in order to support the candidature of the Congress candidates. Ex. 185 is an issue of Sudarshana dated 23rd December 1951 wherein a news item appeared stating that attempts are being made to bring Jawaharlal Nehru to Sholapur (although he had cancelled his visit to Sholapur). In the same news item it is mentioned that Pandit Nehru will go to Poona on the 24th when a deputation is going to wait upon him to press him to go to Sholapur. In Sholapur Samachar of 31st December 1951 (Ex. 187), there was another news item mentioning that Chhanusing, President of the District Congress Committee, went to Poona to request Pandit Jawaharlal Nehru to visit Sholapur, to support the candidature of Congress candidates. But the President was informed that Pandit Jawaharlal Nehru did not wish to visit Sholapur. The said Ex. 187 also published the material contents of Ex. 167. In a Sudarshana issue of 31st December 1951 at Ex. 188 is still another news item "New Move By Sholapur Congress Men." It states that Pandit Jawaharlal Nehru's prospective visit to Sholapur was much advertised, but it has now become evident that he is not visiting Sholapur and that Chhanusing had specially gone to Poona to bring Pandit Nehru, but his request was turned down. Ex. 192 is a contradiction of Ex. 167 issued by Chhanusing, the President of the District Congress Committee at the request of the petitioner himself. It is dated 5th January 1952. Therein it has been stated that attempts were being made to bring Panditji to Sholapur when he had come down to Poona. From all this, it appears that attempts were being made to bring Pandit Jawaharlal Nehru to Sholapur, obviously to support the candidature of the Congress candidates while Pandit Jawaharlal Nehru was on his hurricane tour of India in connection with the Election Campaign. It must, at once, be stated that the correctness of contents of Ex. 185, Ex. 187 and Ex. 188 are not admitted, but the same were admitted for the purposes of execution and were, therefore, so exhibited. The fact, however, of the publication of the said News item in the various papers is not denied. Even leaving these Exs. 185, 187 and 188 out of consideration, it cannot be denied that the Congress President Chhanusing himself admits in Ex. 192 that attempts were being made to bring Pandit Jawaharlal Nehru to Sholapur when he had come down to Poona (*i.e.* on the 24th). Even the petitioner (Ex. 46) admits that he had written to the Maharashtra Provincial Congress Committee to bring Pandit Nehru to Sholapur. Considering these admitted facts and the evidence of Pandit Jawaharlal Nehru at Ex. 226 in this behalf, the burden of proof that no deputation waited on Pandit Jawaharlal Nehru as alleged, cannot be said to have been discharged by the petitioner. Point (c) must, therefore, be decided in the negative. (b) Now, we will consider point (b). The publication of any statement of fact to come within the mischief of Section 123(5) of the Representation of the People Act, 1951, among many other things, should be proved to be false. Ex. 167 contains the following statements. It is headed as "Blessing of Pandit Nehru to Dr. Antrolkar (and Chhanusing)." This does not appear to be a statement of fact, but appears to be a sort of sarcastic suggestion that Pandit Nehru did not hold the political career of Dr. Antrolkar and Chhanusing, in any high esteem. The material statements, which find place in Ex. 167, so far as we are concerned, are that (i) a deputation which left Sholapur to bring Pandit Nehru to Sholapur with a view to strengthen the candidature of Dr. Antrolkar and Chhanusing was not granted an interview

and (ii) Pandit Nehru sent a message through his secretary to the effect that Dr. Antrolikar and Chhanusing had let down the workers and that let Shankarrao More be elected. The statement mentioned in (i) has already been dealt with by me hereinabove. As to the statement in (ii) it began with setting out the political philosophy of Pandit Jawaharlal Nehru, with which we are not concerned. But, what is material therein are the mischievous statements suggesting that Shankarrao More should be elected and the petitioner, who was the sitting member of the Assembly, had let down the workers of his constituency which is predominantly a labour area. The point, therefore, is whether the petitioner has proved that the suggestion made in Ex. 167 about Pandit Jawaharlal Nehru having made such a statement through his secretary is false. It must be remembered that the burden of proof about the false nature of the statement is on the petitioner. The question is whether he has discharged that burden. Pandit Nehru, in his evidence at Ex. 226 categorically denies having sent through his secretary any such message as alleged. He states "I could not possibly have sent any such message as alleged. I am sure I did not send it." The evidence of Pandit Nehru is so honest, straightforward and convincing as it is bound to be, that we have not the slightest hesitation in accepting it in toto. That therefore settles the matter and we may take it as conclusively proved that the said message put in the mouth of Pandit Nehru has never been sent by him. But the difficulty arises from the fact that Pandit Jawaharlal Nehru is not alleged directly to have said such a thing himself. The secretary through whom the message is alleged to have been sent, has not been examined. In our opinion, the evidence of Pandit Jawaharlal Nehru's secretary was essential to negative the fact of such a message having been uttered or carried by him. For aught we know, his secretary may have—although it is not likely—stated some such thing on his own initiative, or he may have misunderstood Shri Pandit's message and stated something to the effect alleged. Such a possibility cannot altogether be ruled out. Unless, therefore, the secretary was examined and he denied having given any such message, it cannot be said that the statement in Ex. 167 regarding the sending of the alleged message proved to be false. When the petitioners applied to examine Pandit Jawaharlal Nehru on commission, it was even suggested by the Chairman of the Tribunal that, in his opinion, at least, the evidence of the said secretary was essential. However, the petitioner did not think it necessary to examine the said secretary. Of course, it is for the petitioner to decide and examine whatever persons he wished to and the Chairman's suggestion is not at all binding on him. During the course of the arguments, it was suggested that Pandit Nehru did not take with him his secretary on his election tour. If Pandit Nehru had been specifically asked that question and if he had denied having taken his secretary with him, that would have been conclusive proof of that fact. However, no such question was put to him nor has he stated in his evidence that he did not take his secretary with him. It will be pertinent to note that when the Chairman made the aforesaid suggestion to examine the secretary, it was not stated to him that Pandit Nehru was not accompanied by his secretary. The learned Advocate for the petitioner, however, relies upon a statement in Pandit Nehru's evidence that "During my tour i.e. Election Tour, no one accompanied me from the headquarters. Local people accompanied me." Undisputedly Pandit Nehru undertook his tour as President of the Indian National Congress. When he states that no one accompanied him from the headquarters, it, in our opinion, would mean that no official of the Congress accompanied him. It certainly could not mean that he was not accompanied by his servant or private secretary. The learned Advocate for the petitioner fairly concedes that the statement would not mean that Panditji was not accompanied by his servant. On the same logic, we fail to see how the secretary can be excluded. In the circumstances, we are unable to hold that the statement in (ii) has been proved to be false. In Law Lexicon of British India by Ramnath Aiyer, the word 'false' is stated to mean this: "In more important uses in jurisprudence the word implies something more than mere untruth. It is untruth coupled with a lying intent." Now, if we accept this meaning of the word 'false'—as we do—it would not be proper to say that the statements contained in the leaflet were false—in absence of proof firstly of the untruth of the said statements and secondly the intention to lie. The contents of the leaflet appeared first in the Divyashakti (Ex. 190) of 29th December 1951, in Sudarshana (Ex. 187) dated 30th December 1951 and in Lokseva of 31st December 1951 as news item without the signature of S. S. Salunke or any other person as the publisher thereof (Ex. 182). Part of the leaflet relating to the request to bring Pandit Nehru to Sholapur and his refusal appeared also in Sudarshana dated 31st December 1951 (Ex. 188). The offending leaflet Ex. 167, according to the evidence of the petitioner himself, could not have been published before 1st January 1952. He states in his evidence at Ex. 16 that "The leaflet and the publication (Ex. 182) thereof in Lokseva were brought to him two or three days after the publication. Chhanusing, President of the District Congress Committee, issued a pamphlet contradicting the statement in the leaflet. The contradiction

was published after my suggestion." He also alleges that "This propaganda has materially affected my election as the contents referred to the quotation of words of Shri Pandit Jawaharlal Nehru, who is held in high reverence by the public in India. The leaflet has caused great damage to me." Judging from this gravity of the leaflet and its capacity of doing mischief, it will not be improper to infer that the contradiction to the leaflet must have been published on the very day on which it was brought to the notice of the petitioner or, at least, on the day next thereof. From this fact coupled with the absence of any reference to the leaflet in the *Divyashakti* of 29th December 1951 Ex. 190, *Sudarshana* of 30th December 1951 Ex. 187, and of 31st December 1951 (Ex. 188) and *Lokseva* of the same date Ex. 182, it will appear that the leaflet had not come into existence till at least 31st December 1951. It was suggested in the cross-examination of Salunke (Ex. 172) that the orders for news-print dated 17th December 1951 and 18th December 1951 were placed for publishing this leaflet. But Pandit Nehru himself visited Poona on the 24th and the alleged delegation waited on him that day or attempts to bring him to Sholapur were made on that day and not earlier. Therefore the order for publishing something which had not happened could not have been placed a week earlier. Therefore, even on a liberal consideration, it appears that the leaflet could not have been published before 1st January 1952. If that is so, the publisher of the said leaflet—whatever he was—must have come to know about the statements in the leaflet whether they were right or wrong before the publication of the leaflet. If, therefore, he repeated those statements, it cannot be said, in the absence of any evidence to the contrary that the publisher knew those statements to be false: that the lying intent of the publisher is proved. He may have honestly believed the facts published in all those papers. In a strict sense, therefore, it cannot be said that the statements made in the leaflet are proved to be false. In the circumstances, we decide issues Nos. 2 and 22 as we have done.

16. *Group No. II: Issues Nos. 5 first and second parts, 6, 7, 9 and 10.*—This group of issues refers to matters concerning the poster (Ex. 166). Analysing these issues, the points which require consideration are: (a) whether the petitioner proves the contents of the alleged poster, (b) whether he proves that the contents of the poster were false, (c) whether they contain a false suggestion that the petitioner was and was understood by all concerned, to be a Goonda, as alleged in para. 6 of the petition, (d) whether the petitioner proves that Salunke published and distributed the said posters, (e) whether the petitioner can be allowed to contend about the falsity of the contents of the alleged suggestion as well as its publication and distribution, in absence of a mention of these matters in the list of corrupt and illegal practices, (f) whether the petitioner proves that the said poster did not bear on its face the name and address of the printer, and (g) whether the publication and distribution of the alleged poster, if proved, constitute an illegal practice within the meaning of Section 125(3) of the Representation of the People Act, 1951.

(a) The original of the poster (Ex. 166) is not forthcoming. The poster is alleged to have been published by S. S. Salunke. He, however, in his evidence at Ex. 172 denies having published or having signed the original thereof. The poster can, therefore, go in as secondary evidence of the original which is untraceable. The printer's name has not been published on the said poster. It is, therefore, almost impossible to trace the printer or the original of the poster. The contents of the poster are, therefore, technically proved.

(b) and (c). As to the contents of the said poster, Ramkrishna Jajuji (Ex. 208) has admitted the same to be correct. It will be pertinent to note that there is no cross-examination as to the falsity of those statements. As to what he meant by the statement "If Goondaism is to be eradicated, then defeat Dr. Antrolkar", he stated to the Tribunal that what he meant was that Dr. Antrolkar was not able to control the elements in the Congress and he, therefore, thought him to be unfit for election. By the word 'elements' he probably meant Goonda elements. We have seen this Jajuji in the witness-box and we were impressed with his honesty, straightforwardness and truthfulness. We are prepared fully to rely on his evidence. He has referred to his interview with a representative of the *Sudarshana* of Sholapur. Therein (Ex. 188) also he has stated that "Dr. Antrolkar and Chhanusing are my friends but they had done damage to the prestige of the Sholapur Congress. There is slackness in Sholapur Congress and filth has accumulated, and for a purification of the Sholapur Congress...following things must necessarily take place. As far as the candidates are concerned, I would say this.....For eradication of Goondaism defeat Dr. Antrolkar.....It is my firm opinion that this purification will not come about without the defeat of these candidates." Ex. 220 is a public clarification issued by the said Jajuji on 31st December 1951. Therein he has referred to the Goondaism of the petitioner (among others) and its result

that the Congress prestige has suffered. He has, however, stated therein that "I told people to defeat Dr. Antrolkar (at the meeting) in order to defeat Goondaism." As to the allegation of the petitioner that "the statement was understood by all concerned to mean that the petitioner was a Goonda," there is no evidence whatever. Nor is there any evidence or even as much as a statement in the petition that this statement referred to the personal character of the petitioner. To us it appears that the statement could not have been meant to refer to his personal character for the reason that the three slogans mentioned in the poster Ex. 166 have reference to the purpose thereof which is mentioned at the top as "For the purification of the Congress." At best, the statement in Ex. 166 against the petitioner would mean nothing more than this that he was a political Goonda, which, in our opinion, has nothing to do with his personal character. On reading the evidence of Jajuji Ex. 208, his clarification Ex. 188 and Ex. 220 together, we do not think it proved that the contents of the poster conveyed the suggestion as alleged by the petitioner in para. 6 of the petition or that they are false.

(d) Salunke himself at Ex. 172 denies having published or distributed the poster. There is no direct evidence to connect him with the publication of the poster. The petitioner Ex. 48 states that he inquired of Mr. Bangale as to the publication of this poster and that Mr. Bangale told him that such a poster had been brought to him; but he refused to publish it. The said Bangale is not examined to show that the poster was brought to Bangale by Salunke or even by someone of the Peasants' and Workers' party. Indeed, the petitioner himself does not say so. The inference, therefore is obvious that neither Salunke nor one from the Peasants' and Workers' party had taken the poster to Bangale for publication. As to the distribution of the poster, there is nothing to connect Salunke with it. One witness Ex. 169 speaks of distribution of posters by "some boys". We have discussed this witness elsewhere. His evidence is not acceptable to us, but apart from this, it is highly improbable that wall-posters will be distributed.

(e) In view of our finding on points (a), (b) and (c) above, this point really does not survive. However, it appears that in the list of corrupt and illegal practices, the petitioner has not referred specifically to the falsity of the contents of the poster nor to the suggestion contained therein nor to the publication and distribution of the poster. The petitioner, however, has referred to paragraph 6 of the petition while mentioning the poster in the list. It is true that Section 83(2) of the Representation of the People Act, 1951, requires that the petition shall be accompanied by a list setting forth full particulars of any corrupt or illegal practice which the petitioner alleges. It is true that in the said list accompanying the petition, the petitioner has not set forth full particulars. However, he has given the particulars regarding the poster in paragraph 6 of his petition. The particulars required by Section 83(2) could have been meant to be a mere expansion and details of the corrupt practices complained against. The object of such particulars could only be to prevent the respondent from being taken by surprise when evidence is led. If the particulars have been given in the petition itself, in our opinion, it is not necessary to repeat the same over again in the list of particulars except when he wants to give some more details. In the absence of such details, we do not think that the petitioner is debarred from raising such contentions against the said poster, as he has referred to in his petition.

(f) As to the absence of the name and address of the printers on the poster itself, there is no dispute. A copy of the poster itself has been produced at Ex. 166 and therein the name and address of the printer do not appear. This point must, therefore, be decided in the affirmative.

(g) Illegal practices have been defined in Section 125 of the Act. It is alleged by the petitioner that the issuing of the poster is an illegal practice within the meaning of sub-section (3) of Section 125. So far as we are concerned, the said illegal practice is defined thus. "The following shall be deemed to be illegal practices for the purposes of this Act.... .

(3) The issuing of any.... poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof." The poster in dispute Ex. 166 bears the name and address of the alleged publisher but does not bear the name and address of the printer. It is argued by the learned Advocate for the respondents that for the poster to come within the mischief of Section 125(3) of the Representation of the People Act, the name and address both of the printer and the publisher must be absent. If it bears the name

and address either of the one or the other, it does not offend against the requirements of Section 125(3) and that, therefore, it argues, the issuing of the alleged poster is not an illegal practice. Reading the requirements of that section, it appears that the poster to be legal must bear on its face the name and address both of the printer and the publisher, and in absence of one or the other, we do not think that the poster can be said to be legal. We must, therefore, hold that the publication of this poster, by whomsoever it be, constitutes an illegal practice within the meaning of the Act—the fact that the poster has a reference to election not being in dispute inasmuch as it specifically says "Defeat Dr. Antrolkar." That it has reference to the election is also further proved by the evidence of Ramkrishna Jajuji Ex. 208. In the circumstances, we decide the first and second parts of issue No. 5 and issues Nos. 6, 7, 9 and 10 as we have done.

17. *Group No. III: Issues Nos. 1, 3, 5 third part and 12.*—Analysing the issues abovesaid, the points which arise for consideration therein are: (a) whether S. S. Salunke was the secretary of the Election Propaganda Committee of the Peasants' and Workers' Party? (b) Whether the petitioner has proved that S. S. Salunke published the leaflet Ex. 167 and distributed the poster Ex. 166? (c) If he did, whether he did so as an agent of respondent No. 1 or with his connivance? (d) Whether the petitioner has proved that respondent No. 1 committed any corrupt practice as alleged? and (e) whether he can be allowed to urge this in the absence of particulars thereof in the list?

(a) It is not the petitioner's case that S. S. Salunke was actually and specifically appointed by respondent No. 1 as his agent of any kind by any specific appointment. The petitioner, however, alleges that the said Salunke published both the said leaflet Ex. 167 and the poster Ex. 166 as a Secretary of the Election Propaganda Committee of the Peasants' and Workers' Party, Sholapur and that as respondent No. 1 was a candidate put up by that party, S. S. Salunke, in law, became his agent. We will deal with this aspect of the case later on. For the present we will confine our attention to the narrow point whether S. S. Salunke was Secretary of the Committee or not. In the said exhibits the publisher has actually been described as such Salunke (Ex. 172) and More respondent No. 1 (Ex. 201) and respondent No. 7 T. S. Jadhav (Ex. 233) deny the very appointment of any such Election Propaganda Committee by the said Peasants' and Workers' Party and necessarily therefore of Salunke being its secretary. In order to prove the existence of such a committee, the petitioner has relied upon the mention of the same in Exs. 166 and 167. But the said documents being themselves the bone of contention in this petition and having not been admitted by Mr. Salunke or Mr. More respondent No. 1 or Mr. Jadhav respondent No. 7, no reliance can be placed upon the mention of the said committee in those documents. The petitioner has further relied for this on the issue of Lokseva dated 5th November 1951 (Ex. 183) where Salunke has been referred to as Secretary of the Sholapur Election office. The fact that he was the Secretary of the Election office has not been denied by Salunke. But that is not the same thing as saying that Salunke was the Secretary of the Election Propaganda Committee. As a Secretary of the Election office he is no better than an executive or a clerk of that office. He himself has stated that he was doing clerical work. Secretary is nothing but a glorified name for Head Clerk. The petitioner stated in his evidence at Ex. 46 that "I learnt about the formation of the Propaganda Committee of the Peasants' and Workers' Party from newspapers and workers of that party". He, however, does not know the name of any member of the Propaganda Committee of the said party nor has he come across any announcement with regard to the formation of such committee, nor has he examined any such worker of Peasants' and Workers' Party. The petitioner has further relied upon the issue of Divyashakti of 25th December 1951 wherein in the advertisement of a small pamphlet of the biography of Mr. T. S. Jadhav, it is stated that the same is available from Salunke, Secretary, Peasants' and Workers' Party. Now, Salunke has denied that he is the Secretary of that party at Sholapur. It is not even the petitioner's case that Salunke was the Secretary of that party at Sholapur. His case is that he was the Secretary of the Election Propaganda Committee of that party and no more. The statement, therefore, in this Divyashakti is obviously false or incorrect as stated by Salunke Ex. 172 and does not take the petitioner's case any further. Witness Fund (Ex. 170) was examined to prove this fact. He states "In connection with the Election there was an Election Propaganda Committee for the district on behalf of the party; S. S. Salunke was the Secretary of the Committee." He further states that "The committee was formed one month prior to the election." Now, the proceeding Book of the party (Ex. 234) is on record. Therein is a resolution unanimously passed saying that "There should be one Election Mandal for the Election work of the District and that there should be Election Committees for the Election work in the Talukas." This will show that some sort of election Mandal or committee was at

this time contemplated. Unfortunately, this resolution does not bear any date. But it appears from a debit entry of Re. 1 as meeting expenses on 4th November 1951 at Ex. 238, that the same may have been held on 4th November 1951. It was suggested by respondent No. 1 that the Election Mandel contemplated in the resolution referred to the committee authorised to select the prospective candidates. But this does not appear to be true. Apart from this, the resolution has reference to election work of the District and the election work of the Talukas. It, therefore, appears that the formation of some Election Committee was contemplated on this date i.e. 4th November 1951. Besides, Ex. 235 which is a resolution passed on 2nd September 1951 shows that candidates must already have been selected by that time. It, therefore, appears that the resolution in Ex. 234 has reference to some Election Committee which was contemplated. There is, however, nothing reliable in evidence nor anything from minute book of the Peasants' and Workers' Party which is on record from which to conclude that an election committee was ever actually formed as alleged, much less has it been proved that S. S. Salunke was appointed its secretary. The evidence of witness Fund (Ex. 170) is unreliable for reasons set out by us in the next paragraph. This point must, therefore, be decided in the negative.

(b) S. S. Salunke himself at Ex. 172 denied ever having published the impugned leaflet or poster. There is no direct evidence to prove the publication of the leaflet and the poster by him. It is alleged by the petitioner that Salunke, who is the manager of the Lokseva Press, has got the leaflet printed in the Lokseva Press and published and distributed the same. The petitioner got a summons issued to the said Salunke Ex. 120 requiring him to bring with him the manuscript of the leaflet. He has, however, stated that he never published any such leaflet and that the same was not printed in the Lokseva Press. It is argued by the learned Advocate for the petitioner that the printing at the bottom of the leaflet, stating that the matter was printed in the Lokseva Press bears part of the bracket-sign at the end of that statement and no such sign in the beginning thereof, and that the same is the case with other admitted publications by the Lokseva Press. This is quite true. He argues from this, which he says is a common mistake, that the necessary inference is that the pamphlet must have been published in the Lokseva Press. I am afraid, however, that no such inference can be drawn and that for a very good reason viz., that one who wants to publish something purporting to have been published by a press, which in fact did not publish it, is most likely to take care to imitate the publication of that press and in particular the specific material which shows that the publication was made by that particular press. We are, therefore, unable to hold it proved that the impugned leaflet was published by the Lokseva Press. As to the poster, no suggestion has been made as to where and in which press it was published. However, the petitioner, whose evidence is at Ex. 48, has stated that "I made enquiries as to the place where the poster was printed. I inquired with Mr. Bangale and he told me that such a poster was brought for printing but he refused to print it. I could not ascertain the name of the press where the poster was printed in spite of my enquiries." Curiously enough, as already discussed above, the petitioner has not stated in his evidence as to who had brought such a poster to Mr. Bangale for printing. Mr. Bangale has also not been examined. These are significant facts. In our opinion, they suggest that the person who took it to Bangale could not have been Salunke. If it was he, we have no doubt that the petitioner would have stated so and also examined Mr. Bangale. There is, therefore, no direct evidence to connect the publication of the leaflet and the poster with Salunke. Some circumstantial evidence has, however, been produced. The petitioner's witness Sayad Mahomed Hafiz Abdul Razak (Ex. 189) has stated in his evidence that on 26-12-1951 a copy of the impugned leaflet was handed over to him by S. S. Salunke in Faltan gully. This is an attempt to connect Salunke with the publication and distribution of the leaflet. This witness like most of the petitioner's and respondents' witnesses did not appear to be too reliable. He gives an extraordinary reason as to why he happens to remember the particular day when he met Salunke when the latter handed over this pamphlet to him. He states that he remembers the day because on that day he had purchased some cloth and had a bill therefor. He does not say that he had referred to the bill for recollecting this date. He cannot give the date when he purchased cloth during the last year. This is rather difficult to understand. He states that he told Salunke then that he did not believe the contents of the leaflet, in reply to which Salunke told him that the leaflet was issued under his signature and cannot be untrue. This is a further attempt to pin the publication on Salunke. He states further that he saw the leaflet having been reproduced on the 29th December in Divyashakti and Lokseva of the 31st December and that he also got suspicious about the contents of the leaflet and on 4th January 1952 he expressed his inability to work for the petitioner when he met him although he had promised him help earlier. This witness who is a fuel merchant belongs to the Congress party since 1935.

He worked for the Congress party in the Elections of 1946. He is also a member of the Executive Ward Congress Committee of Begampeth for the last three years. He also promised to work for the petitioner. He is thus an interested witness apart from the fact that he did not impress us at all as truthful. Sukhdev Fund, a mill labourer is another witness (Ex. 170) who states that Salunke actually handed over about 5,000 leaflets to him for distribution at Akkalkot. This was on 24th December 1951 at about 2 P.M. He further stated that these leaflets were handed over to him in the presence of More at the Lokseva press in Sholapur. Admittedly, and even as the petitioner himself states in his evidence at Ex. 46, Pandit Jawaharlal Nehru came to Poona on 24-12-1951. Mr. More Ex. 201 stated in his evidence that he was not in Sholapur on the 24th instant but was in Poona and came to Sholapur on 25th December 1951. This gains support from Ex. 261, a letter addressed to Respondent No. 7 asking him to come down to Sholapur as Mr. More was coming there on that date. It is, therefore, hard to swallow that the leaflet Ex. 167 which referred to the fact of a deputation having waited on Pandit Nehru and his refusal to admit the deputation could have been published so early as by 2 P.M. on 24th December 1951. Mr. More stated in his evidence that he was at Poona on the 24th. If we believe this statement of Mr. More, as we do believe it and consider the high improbability of the leaflet having been published so early as by 2 o'clock on 24th December 1951, it appears that this witness cannot be believed. This witness is a renegade from the Peasants' and Workers' party which he left in April 1952. He is a signatory to Ex. 171, a leaflet issued against the Peasants' and Workers' party and in particular against Mr. T. S. Jadhav, an organiser of this party. There is other intrinsic evidence also from which we can conclude that the evidence of this witness cannot be accepted. He states that there was a meeting on behalf of the Congress at Akkalkot after he distributed these leaflets but no reference to the leaflet was made by any of the speakers. Now, if the leaflet was published and distributed as alleged by this witness, it is difficult to believe that no speaker at the meeting held by the Congress would even refer to the leaflet. This witness further states that he was with Messrs. More and Jadhav in the election propaganda and that he was in Akkalkot for eight days from 26th December 1951 to 1st January 1952, which would mean that Messrs. More and Jadhav were of Akkalkot during these eight days. This is too much to believe. Mr. Jadhav has produced his tour programme at Ex. 265. From that it appears that at least from and since 30th December 1951 he was not at Akkalkot till at least 4th January 1952. Mr. More states at Ex. 201 that he was in Akkalkot on 25th and not on the 24th as alleged. This witness also like his predecessor did not impress us at all. Ex. 171 to which he is a signatory will show that he is bitterly against the Peasants' and Workers' party and particularly against Mr. T. S. Jadhav who worked with the respondent in the election propaganda. Ex. 165 is another witness, also a recent renegade from the Peasants' and Workers' party like his predecessor. He speaks of the distribution of the leaflet at a meeting at Upale Dumula on 26th December 1951. He, however, though a staunch Congress convert did not inform the workers about it till 31st December 1951. We have discussed this witness elsewhere and we do not believe him. Dr. Antrolkar himself has stated in his evidence at Ex. 46 that the leaflet and the poster were brought to his notice two or three days after their publication and that the contradiction to the leaflet was published at his suggestion by the President District Congress Committee on 5th January 1952. We have already held above that the leaflet could not have been published earlier than 1st January 1952. From this fact also it is clear that the evidence of these witnesses is difficult to be believed. Curiously enough the petitioner never came across this atrocious leaflet during the whole of his election tour. The three witnesses who tried to connect directly the publication and distribution of the leaflet with Salunke, we refuse, and in absence of any further reliable evidence we must hold that the fact that Salunke published and distributed the leaflets and published the poster must be held not to have been proved. We accordingly leads this point in the negative.

(c) In view of our findings on points (a) and (b) above in the negative, this point does not survive. However, to err on the safe side, we will consider and decide this point as well. As already mentioned above, it is not the petitioner's case, nor is there any evidence to show that Mr. S. S. Salunke was actually and specifically appointed by Mr. S. S. More as his agent. The petitioner's case as set out in the petition is that respondent No. 1 was a candidate set up by the Peasants' and Workers' party, that the said party appointed an Election Propaganda Committee and that Salunke was a Secretary of that Committee and that he having published the leaflet Ex. 167 and the poster Ex. 168 in his capacity as such secretary, he, in law, did it as an agent of respondent No. 1. If these facts were established, I think the petitioner was on a firm ground. Section 79(a) of the Representation of the People Act, 1951, defines 'agent' to include

an Election Agent, a Polling Agent and a Counting Agent and any person, who, on the trial of an election petition.....is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate." It thus appears that the term "agent" as contemplated by this Act is a much wider term than what it is understood to mean in ordinary law. The learned Advocate for the respondent has argued that the particulars as to the creation of agency as required by law have not been given, and that, therefore, the evidence regarding facts or particulars which have not been mentioned in the petition or the list must be excluded. But here the very definition of the term 'agent' excludes the necessity of supplying particulars, for, it refers to events which may happen after the petition has been filed *viz.*, proof at the trial of the person having acted as an agent. There cannot, therefore, be any possibility of those particulars being given in the petition. In view of this definition of the term 'agent', the contention of the learned Advocate is unsustainable. The learned Advocate for the petitioner has referred to the law of Parliamentary Elections and Election Petitions, 3rd Edition, page 73, where it has been observed that "In the ordinary sense of the word, a man cannot usually make another his agent without having his eyes fully open to what he is doing. But he may create an agent in the election sense of the word without being conscious of what is being done and in fact in such manner that when the person has ultimately decided to be his agent, nobody is more astonished than himself" Mr. Justice Channel in the (*it* Yarmouth case stated: "The substance of the principle of agency is that if a man is employed at the election to get you votes or, if although neither employed nor authorised, he does so to your knowledge to get you votes and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you." The learned Advocate also cited Hammond's Election Cases page 201. "A candidate is responsible generally for the actions of those who, to his knowledge, for the purpose of promoting an election, canvass and do such other things as may tend to promote his election provided that the candidate or his authorised agent has reasonable knowledge that these persons are so acting with that object." This English law appears to be in consonance to some extent with the definition of the term 'agent' in the Representation of the People Act, 1951, inasmuch as the knowledge of the principal and his acceptance of what the agent has done for the promotion of his election is essential to fix up the liability for the acts of the agent on the principal." A candidate set up by a party is responsible for the acts done by that party and its agency. Where, therefore, the President of the Swarajya Party got a false publication printed, the candidate who was set up by the Swarajya party was held to be responsible for the publication." (Nanakchand Law of Elections and Election Petitions in India, page 75). "A poster was published by a society or its prominent members, who put up a candidate, the Society and its members became agents of the candidate." (Indian Election Cases by Doabia Vol. I p. 22) "Where the respondent fought election on the Muslim League ticket and the League arranged meetings and processions etc., in furtherance of the cause of his election, the League and its secretary were held to be respondent's agents." (Indian Election Cases by Doabia Vol. II page 310). Now, therefore, it is necessary for the petitioner to prove that the persons, whom he calls the agents of respondent No. 1, were actually employed or authorised by him to do the acts which they did. It will be sufficient for him to prove that those persons to the knowledge of respondent acted for the purpose of promoting his election and that he accepted and adopted their acts. In the present case, there is no evidence whatever that Salunke published and distributed this leaflet and poster with the knowledge, consent or connivance of respondent No. 1. It is argued by the learned Advocate for the petitioner that inasmuch as respondent No. 1 did not issue any contradiction to the leaflet or to the poster, it may fairly be inferred that he had connived at the same even if he had no actual knowledge thereof or even if they were not issued with his approval and consent. This argument would have some force had there been reliable evidence on record to show that respondent No. 1 had knowledge of the publication of the said leaflet and poster under the signature of S. S. Salunke, as a member or secretary of the Peasants' and Workers' party or as secretary of its so-called Election Propaganda Committee. The fact that S. S. Salunke is a member and worker of the Peasants' and Workers' party is not in dispute. But there is no reliable evidence to impute knowledge of the publication of these two to respondent No. 1. What little evidence there is is not believable. In the absence, therefore, of the knowledge or consent of respondent No. 1 to the publication of Ex. 167 and Ex. 168 by Salunke, the latter cannot be held to be his agent. Respondent No. 1 more has denied his having anything to do with the publication of these two exhibits or knowledge thereof. Manekchand Shah (Ex. 156) is a

witness who speaks of a meeting held on 5th January 1951 at Madha where respondent No. 1 while addressing the meeting is alleged to have referred to the statement of Jawaharlal Nehru "mentioned in the leaflets" distributed at the meeting. This, of course, has been denied by Mr. More. He also stated that similar leaflets were distributed at a meeting held on 4th January 1951 and addressed by T. S. Jadhav respondent No. 7 and that he himself had received such a leaflet. An application to summon this witness was made by Ex. 72 on 21st March 1953 and a summons was accordingly issued. He was not asked to bring the leaflet with him. He admits that there is no reference in the summons to the leaflet he produced in court. But he states that "Dr. Antrolkar met me one and half months back and asked if I had any of the leaflets distributed at Madha." Still, curiously enough, the petitioner in his application did not apply for a summons against this witness to come with the leaflet. But according to the witness, he himself surmised that he was called with the leaflet and he therefore brought the same. He stated in his evidence that he has a record of the leaflets issued by various parties in the last 50 years since the time of his father, although he has admitted that he was not keenly watching the movements of the political parties at the time of the elections. In anticipation of cross-examination it appears that he had armed himself with a few more pamphlets. We have known of stamp collectors, and coin collectors, but this is for the first time that we hear of a pamphlet collector. Curiously enough, the pamphlets which had brought with him did not bear any marks of filing or age, but were clean and unruled. This witness, according to himself, was a member of the Congress for some time and now a sympathiser as nobody approached him with a Form for Congress Membership. Apart from the fact that he is an interested witness, he had not impressed us at all as being truthful and reliable. There is another circumstance also from which we must come to the same conclusion. He states that Baburao Joshi who had addressed the Congress meeting at Madha on the 6th may not have referred to the leaflet in his speech. It is impossible to believe that if these pamphlets were distributed as alleged, in Madha on the 4th and 5th, this Congress worker Baburao Joshi who was once a Congress member of the Legislative Assembly would have failed to attack or refer to the same in his speech. We, therefore, refuse to accept the evidence of this witness as truthful. Vilhal Mhaske (Ex. 159), a fuel merchant, is another witness examined by the petitioner. He speaks of a meeting held at Sangola about a week before the election. The election was held on 7th January 1952. This meeting may, therefore, be fairly taken to have been held on or about 1st January 1952. The witness states that respondent No. 1, among others, exhorted voters to vote for him as "Shri Jawaharlal Nehru had observed that way." He also states that they distributed some pamphlets like Ex. 167 at the meeting. He is, however, unable to state who actually distributed the leaflets at the said meeting. He further states that he had no talk with Dr. Antrolkar with regard to the leaflets till today nor as regards the contents thereof with any Congress worker. He further says "Nobody on behalf of Dr. Antrolkar saw me in connection with the election. I did not make any enquiry as to why I was called as a witness in the case." He states in his evidence that "No meeting was held at my village on behalf of the Congress party prior to the above meeting. But later on, he has to admit that "There were two or three meetings at Sangola prior to the meeting at which the leaflet was circulated." The witness is unable to recollect even the contents of the leaflet. This witness again did not appear to be truthful and we were not impressed with his evidence. We, therefore, refuse to accept his evidence. Then we come to the evidence of Kishanlal Marwari, a pleader of Mangalvedhe at Ex. 168. He stated that Shankarrao More and his party distributed the leaflets Ex. 166. He however states that in spite of his explanation, the voters had changed their minds as the leaflets contained a recommendation by Pandit Jawaharlal Nehru. He states that "The voters flatly told him that they would vote for More and Jadhav as Jawaharlal has stated about them in the leaflet and that they would not elect Dr. Antrolkar. Now, admittedly this Mangalvedhe is in Barsi-Madha constituency. Neither Jadhav nor Chhanusing was a candidate for this constituency. It is, therefore, impossible to believe this witness when he states that the voters flatly told him that they would vote for Jadhav or Chhanusing. Although in his examination-in-chief the witness went to the length of stating that Shankarrao More distributed the leaflets, in his cross-examination he had to admit that Shankarrao More himself did not distribute the pamphlets. This witness is a Congress worker and a Secretary of the Taluka Congress Committee for the last three years. He has toured the Taluka for the Congress work. He does Congress work since the beginning of his practice, i.e., for the last seven years. He visited 60 villages in the beginning for the election propaganda work prior to the distribution of the leaflet and about 25 villages thereafter. He informed Baburao

Badve in writing about the situation after the leaflet. But curiously enough, that writing is not called for, nor Baburao Badve examined. He received instructions from Baburao Badve and the petitioner to explain the whole thing to the electorate. But he himself issued no leaflet to counteract Ex. 167. He states that on or about 6th or 7th January some leaflets were issued to counteract Ex. 167. But none of these has been produced. This person was present at the Babulgaon meeting held after the election in February 1952 to discuss the causes of the failure of the Congress at the elections. He states that there were no discussions with regard to the causes of the failure of the Congress in the elections at the meeting. The minutes of the Babulgaon meeting are on record. They do show that there was a discussion therein with regard to the causes of the Congress failure in the election (Ex. 254). When confronted with this, the witness changed his front and stated that "At Babulgaon there was a meeting of Congress workers in the open and there was another meeting inside a house which was more or less a confidential meeting at which I was not present." The explanation is certainly clever and ingenuous but does not appear to be truthful at all. Even the petitioner has not spoken of two meetings at Babulgaon. Besides, it is difficult to understand that even if there was such a confidential meeting to discuss the causes of the failure of the Congress, this important person was the Secretary of a Taluka Congress Committee was not invited at that meeting. In the minutes of the meeting itself, it is stated that the same was attended, among others, by Secretaries of the District and Taluka Committees and even some workers, though not invited, were present. It is, therefore, difficult to believe this witness although he happens to be a double graduate and a practising lawyer. The witness did not appear to have much scruples or much regard for truth, and we refuse to accept his evidence. All this evidence is not believable and also cannot be accepted for another reason. Section 83(2) of the Representation of the People Act, 1951, enjoins that "The petition shall be accompanied by a list signed and verified in a like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and date and place of the commission of each such practice." Sub-section 3 of the said section empowers a Tribunal to allow particulars to be amended. But the petitioner has neither set forth the names of the parties alleged to have committed the corrupt or illegal practices nor dates and places of such commissions. Respondent No. 1 by his written statement Ex. 23, paragraph 12 complained of such want of particulars, but the petitioner chose not to apply for amendment of the list by giving particulars. Respondent No. 1 by his application again (Ex. 155) complained above want of particulars regarding the names, dates and places of the alleged corrupt practices and prayed that all evidence regarding these matters must be shut out or heard subject to the final arguments and decision of that question. Petitioner did not care to amend the particulars but chose to adduce evidence subject to the condition suggested. He must, therefore, take the consequences. These particulars in the list are required to be signed and verified like pleadings. They are, therefore, given the same importance and status as pleadings themselves. In absence, therefore, of the particulars in the list about the distribution of the pamphlets at the various meetings by the Peasants' and Workers' party or by Mr. S. S. Salunke or the presence of Mr. Jadhav or Mr. More or otherwise, must be shut out. But to err on the safe side, we have considered the evidence on its merits as well. We have discussed this evidence while discussing the point of agency of S. S. Salunke only because the petitioner in his evidence stated that he regarded Salunke as an agent of respondent No. 1 as the former accompanied the latter in his election tour. This is altogether a new case tried to be made out for the first time at the hearing. None of the witnesses referred to in this paragraph nor Mr. More was questioned as to the presence of S. S. Salunke with respondent No. 1 at these meetings. But, even on the assumption that that statement of the petitioner was true—which do not believe to be true—in view of our rejection of the evidence of these witnesses the fact of agency remains unproved; so also the connivance by respondent No. 1. The learned Advocate for the petitioner wants us to hold the agency of Salunke proved from the undisputed facts that (1) Salunke is a member of the Peasants' and Workers' Party since 1942, (2) a Manager of Lokseva Press since 1948, (3) Lokseva Press maintaining a khata of the party, (4) Salunke handles that khata and account, (5) he attends meetings of the party at the party's cost, (6) he accepts and pays moneys on behalf of the party, (7) he also acts for the Weekly as Ex. 140 and Ex. 141 will show, (8) he issues circulars on behalf of the party, and (9) even programmes of Fate party were instructed to be arranged in consultation with him. In our opinion, however, all these are quite consistent with Salunke being a member of the Peasants' and Workers' Party and his also being the office Secretary of that Party in Sholapur. These factors do not prove

that he was agent either of respondent No. 1 or the party. This point must, therefore, be decided in the negative.

(d) Section 123(5) defines major corrupt practices. The corrupt practices alleged by the petitioner fall, according to him, within sub-section 5 of Section 123 of the Act. That sub-section enacts that "The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election" is to be deemed to be a corrupt practice for the purposes of the Act. In order, therefore, to prove corrupt practice the following must be alleged and proved, *viz.*, (i) there was a publication, (ii) by (a) candidate or his (b) agent or (c) any other person with the connivance of the candidate or his agent, (iii) of any statement of fact, (iv) which statement is false, and (v) which (a) he either believes to be false or (b) does not believe to be true, (vi) which statement is in relation to (a) the personal character, or (b) conduct of any candidate or (c) in relation to his candidature or his withdrawal, and (vii) which is reasonably calculated to prejudice the prospects of the candidate's election. In our opinion, it was necessary for the petitioner to set out all these allegations in the petition. In absence of such specific allegations, it is difficult for the respondent to meet the petitioner's case. He, in the absence of such specific pleadings, naturally does not know what the complaint of the petitioner is with regard to the offending statement; whether in his opinion, it is in relation to his personal character or conduct or to his candidature and whether he believes that the statement was reasonably calculated to prejudice the prospects of his election. The respondent is bound to be taken by surprise at the hearing. The evidence on these points would, therefore, be inadmissible and cannot be considered. To err, however, on the safe side, we will prefer to consider that evidence also along with the rest.

We will now take the requirements of this section one by one.

(i) The fact of the publication of Exs. 166, 167 and 182 is not in dispute.

(ii) That Exs. 166 and 167 were published by S. S. Salunke or that they were published by him as agent of respondent No. 1 or with his connivance have not been proved as we have already held. That Ex. 182 was published by T. S. Jadhav or with the connivance of respondent No. 1 or his agent has also not been proved as held later on in this order.

(iii) The statement must be a statement of fact. Taking Ex. 167, there is no doubt that the material statements therein are statements of fact, *viz.*, that a deputation which went to bring Pandit Nehru to Sholapur was refused an interview and that Pandit Nehru sent a certain message through his secretary. As a matter of fact, it is not disputed by respondent No. 1 that the statements in Ex. 167 are statements of fact. As regards Ex. 166 also, there cannot be any doubt that the same are statements of fact. All that Ex. 166 states is a statement that Karmaveer Jajuji of Sholapur made the statement mentioned therein. This latter fact is admitted by Jajuji himself and is, therefore, true. The allegation in Ex. 166 is, as we have already held, not relating to the personal character of the petitioner. It is not even his case that it is in relation to his candidature. Ex. 166, therefore, is outside the scope of Section 123(5). We are not concerned with the truthfulness or otherwise of the statements themselves made by Karmaveer Jajuji. As to Ex. 167, as we have already held, the falsity of the statements therein has not been proved. That statement also, therefore, is outside the scope of Section 123(5) of the Act. We will, however, further to err on the safe side, consider the other ingredients of that section.

(iv) It must be proved by the petitioner that the statements in the said three exhibits are false. We have already held that the petitioner has failed to prove that the statements in Exs. 166 and 167 are false. We have also held later on in this order that the petitioner has equally failed to prove that the statements in Ex. 182 are false. As a matter of fact, the statements in Exs. 167 and 182 are identical except for the fact that the former is published under the alleged signature of S. S. Salunke. As a necessary corollary, it must, therefore, follow from a decision on Ex. 167 that Ex. 182 is also not proved to be false.

(v) (a) (b). In view of the fact that the publication of any of the abovesaid three exhibits has not been proved to have been made either by Salunke or T. S. Jadhav, it must follow as a necessary consequence that the fact of belief about the statements in these exhibits to be false or not to be true does not arise and is not proved. Respondent No 1 argued that the necessary allegation in this behalf has not been made in the petition. The petitioner has, however, stated that the said Salunke and T. S. Jadhav "falsely stated". This phrase includes and implies the necessary allegations.

(vi) (a) (b) (c). The petitioner has not in his petition stated what the statements in the three exhibits referred to are. As regards Ex. 166, he has stated in his evidence that it refers to his personal character. As regards the other two, he has not clarified his position. We will first deal with Ex. 166. As we have remarked elsewhere in this order, this poster is headed "For purification of the Congress". Then it proceeds to say "for eradication of Goondalism defeat Dr. Antrolikar". Obviously, therefore, it has reference to the defeat of the petitioner in the election for the purposes of purification of the Congress. The petitioner has stated in his evidence and in the petition that the statement was meant to be or was understood by all concerned to mean that the petitioner was a Goonda. As to what it was meant 'to mean', the person who made the statement himself, namely, Jajuji (Ex. 208) himself has stated in his evidence that "The petitioner was not able to control elements in the Congress. I think him to be unfit for the election." It will be pertinent to note that not a single question has been put to this witness as to what he meant by his statement above referred to. In his cross-examination the abovesated answer the witness gave only in reply to a question from the Tribunal. The petitioner has, therefore, fail to prove that the statement was meant to mean that the petitioner was a Goonda. As to how that statement was actually understood by all concerned, there is no iota of evidence. The fact, therefore, that the statement referred to the personal character of the petitioner remains unproved. As regards (b) and (c), it is not even the petitioner's case that the statement referred to his conduct or to his candidature or withdrawal. As regards the other two Exs. 167 and 182 which are substantially the same, the statements obviously do not refer to his personal character or conduct. It is, however, alleged that they refer to his candidature. Now, candidature has been described as the bundle of rights and qualifications which entitles a person to stand as a candidate in a particular constituency as well as the factum of his being a candidate (see Doabia, Indian Election Cases Vol. 1, page 304). The statements contained in Exs. 167 and 182 have no reference whatever to the right or qualifications of the petitioner which entitle him to stand as a candidate nor has it any reference to the factum of his candidature. It is not even his case that it is so. The learned Advocate for the petitioner, however, argues that inasmuch as the statements in the said two exhibits have reference to his election and chances to succeed as a candidate in the election, the statements must be deemed to be in relation to his candidature. We are unable to agree with this view of the learned Advocate. It is one thing to say that a certain statement affects the chances of a candidate at the election and quite another to say that it is in relation to his candidature itself. The words following that clause, *viz.*, "or withdrawal of any candidate" makes the meaning clear. In our opinion, the statement to come within the mischief of this part of the section 123(5) must relate to the right or the qualifications or the factum of the candidate as such. In the circumstances, we are unable to hold that the statements in any of the three exhibits are in relation to the personal character, conduct or candidature or withdrawal of the petitioner.

(vii) Coming to this point, the same again has not been pleaded in the petition. But there could be no doubt about the object of all these statements in Exs. 166, 167 and 182. The statements in the first two are attributed to no less a personage than Pandit Nehru who is held in the highest esteem and reverence by all the people of India and that in the last is by one Jajuji known as Karmaveer of Sholapur whose opinion seems to count in Sholapur. If these persons say that the petitioner has done no work and that he should not be allowed to be elected and that he should be defeated—the purpose of these publications needs no comment. They are obviously calculated to prejudice the prospects of the petitioner's election. Considering these questions together, we must decide the point (d) in the negative.

(e) It is true that some of the particulars of corrupt practices have not been given although the petitioner was given opportunities to supply the same. The evidence regarding these matters, which were not mentioned either in the petition or the particulars, *viz.*, the names of the persons, dates and places, should, therefore, be shut out. Respondent No 1 dealt with the evidence as best as he could in spite of the handicap he had and we have for the sake of safety, considered that evidence on merits also. However, in absence of certain particulars, the petitioner cannot be allowed to rely upon this part of the evidence. But he can

certainly urge the plea of corrupt practice on whatever particulars he had already supplied in the petition and the list and to that extent he can urge that plea. We therefore, decide these issues as we have done.

18. *Group IV: Issue No. 4.*—This issue involves a consideration of two points: (a) whether the leaflet Ex. 167 was reproduced in Lokseva Weekly with the knowledge or consent of respondent No. 7, (b) If so, was it done by him as an agent of or with the connivance of respondent No. 1. Lokseva Weekly publications, on the face of them, show that respondent No. 7 was a publisher of the said publications. However, as stated by respondent No. 7 in his evidence at Ex. 233, it appears to be a mistake and oversight. Ex. 151 is a declaration under Section 5 of the Press and Registration of Books Act, 1867, made by J. R. Pawar declaring that he is the editor and publisher of the said Lokseva. This is dated 21st November 1950. Respondent No. 7 has on the same day made a declaration under Section 8 of the said Act by Ex. 152 that he has ceased to be the editor and publisher of the said Weekly. It is, therefore, beyond question that the statement in the Lokseva issue purporting to say that Jadhav was an editor and publisher of the Weekly was erroneous. In order to bring home to respondent No. 7 the knowledge about the publication of Ex. 182 in the Lokseva, that fact must be proved by positive evidence. Now, Jadhav in his evidence at Ex. 233, denies having seen a leaflet like Ex. 167 or having published Ex. 182 or having any knowledge of the same. He further states that he was outside Sholapur City from 15th December 1951 to 7th January 1952 for his work in connection with the election. He denies having read out this pamphlet at the meeting of Upal as stated by Ex. 165 or the circulation of such a leaflet at the meeting. He also denies having referred to the leaflet at the meeting at Madha on 4th January 1952 as alleged by witness Manekchand Shah (Ex. 156) and also about the circulation of the leaflet at that meeting. He denies having toured the district with respondent No. 1 and Satunke or with Fund. Ex. 242 is the tour programme of Mr. Jadhav issued by Laxman Kashid, Secretary Peasants' and Workers' Party, Barsi. That programme refers to 25th December 1951 when this respondent No. 7 was scheduled to visit six different places other than Sholapur City. Ex. 263 is another programme of Mr. Jadhav from 30th December 1951 to 4th January 1952. He was scheduled to visit numerous places also other than the city of Sholapur during this week. He states that he stuck to this programme. There is nothing to controvert this statement of his. It therefore, appears that on 25th December 1951 and from 30th December 1951 to 5th January 1952 (both days inclusive) he was out of the city of Sholapur. It has not been proved that during the intermediate days he was in Sholapur. As a matter of fact, as I have already mentioned above, the witness has stated that from 15th December 1951 to 7th January 1952 he was outside Sholapur. This has not been met by any reliable evidence and we have no reason to disbelieve it. It appears to be true as this witness was a candidate for the Assembly and was likely to be busy with his election work in his constituency, Sholapur city not being part thereof. In the circumstances, it is quite likely that this witness who does admit to have some sort of interest in the press, may not have any knowledge about the publication of Ex. 182. In any event, the burden of proving that fact is on the petitioner. There is no satisfactory evidence to show that he had any such knowledge or that he had published Ex. 182 himself or that it was published with his or respondent No. 1's consent or connivance. This point must, therefore, be decided in the negative.

(b) In view of our finding on point (a) this point does not survive. As to respondent No. 7 being the agent of respondent No. 1, there cannot be much doubt in view of the law hereinabove set out and in view of the admitted fact that both respondent No. 1 and respondent No. 7 were carrying on a joint propaganda for the party candidate, and actually one for the other. But as already hereinbefore held, there is no evidence of the publication of Ex. 182 by respondent No. 7 or of the consent or connivance of respondent No. 1 or his own. This point also, therefore, if necessary, must be decided in the negative.

19. *Group No. V: Issues Nos. 17 and 11.*—In view of our finding that no corrupt practice has been proved, these issues do not survive. However, to err on the safe side, we will consider the same. Analysing these, the points for consideration will be: (a) whether the petitioner proves that the election of respondent No. 1 has been procured or the result of the election has been materially affected by a corrupt practice as alleged; (b) whether respondents Nos. 1 and 7 prove that Exs. 167 and 182 were effectively counteracted by the petitioner and his party.

(a) Section 100(2) of the Representation of the People Act enacts, so far as we are concerned, that if the Tribunal is of opinion that (b) any corrupt practice specified in Section 123 has been committed by returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent;

—the Tribunal shall declare the election of the returned candidate to be void. In the present case the corrupt practice alleged is that coming within sub-section (5) of Section 123. Therefore, the question of the result having been procured or being materially affected thereby does not arise. For the declaration of the returned candidate to be declared void, it is sufficient merely to prove that he is guilty of a corrupt practice specified in Section 123, and the proof of procuring the election or its result being materially affected by such practice does not arise at all and is altogether immaterial. The issue as framed, therefore, appears to be misconceived. Sub-section (a) of Section 100(2) refers to the procuring the result or the same being materially affected by a corrupt or illegal practice. However, corrupt practices have been classified into two kinds, viz., Major and Minor. The major corrupt practices have been set out in Section 123 and the minor, in Section 124. It therefore, appears that the corrupt practice referred to in sub-section (a) of Section 100(2) of the Act is a minor corrupt practice which is referred to in Section 124. As regards the illegal practice alleged *viz.*, publication of Ex. 166. no allegation has been made that it materially affected the result of the election or that the result was thereby procured. So, that is out of the question. However, now that the issue has been so framed, evidence led and the matter argued out, we might as well dispose of the same on merits. Attempts have been made to show that Ex. 167 was published somewhere about 26th December 1951. However, as already hereinbefore held, in our opinion, it could not have come into existence before 1st January 1952. There is no reliable evidence of how many copies thereof were published and in what places they were distributed and what actual mischief the leaflet did although unsuccessful attempts in these directions were made by the petitioner while evidence was heard. In the evidence of the petitioner and his witnesses, it was alleged that the leaflet was seen at many villages. There is, however, not much reliable evidence as to what places these leaflets and posters in the Lokseva Weekly were actually circulated or pasted or what mischief they did. In our opinion, at least, Ex. 167 and Ex. 182 could not have been taken serious notice of. If they were so seriously looked at as is now sought to be alleged, the Congress party would certainly have obtained a contradiction of the statement in the leaflet from Pandit Jawaharlal Nehru himself. We do not find any such contradiction issued or alleged to have been issued by the petitioner or the congress. The contents of Ex. 166 are proved to be true by Jajuji himself. Ex. 192 is, according to the petitioner himself, a contradiction of the leaflet Ex. 167. Still, curiously enough, there is not a word of reference in the said contradiction to this leaflet. The learned Advocate for the petitioner attempted to read a reference to this leaflet from the word 'Jahirati' (advertisements or pamphlets) mentioned in the said Ex. 192. We are, unfortunately, not prepared to accept this interpretation of the learned Advocate for the petitioner. It is impossible to find absence of any reference to the particular leaflet which is sought to be contradicted by Ex. 192. In the said contradiction there is not even a reference to the Peasants' and Workers' Party. It only refers in general terms the opponents of the Congress. It, therefore, appears that till 5th January 1952, on which date this contradiction was issued, this leaflet was not seriously taken notice of. There is certainly reference to newspapers opposing the Congress and in this may be included Ex. 182. But even then, in the contradiction there is no reference whatever to this particular issue or the statement contained in Ex. 182. It, therefore, appears that Ex. 192 is not at all a contradiction of the statement in Ex. 167 but is a pamphlet published in general terms in furtherance of the election propaganda of the Congress.

Coming next to the Babulgaon meeting (Ex. 254), it was held on 9th February 1952 under the Presidentship of Chhanusingh himself. It states that it was attended by all members of the Provincial Congress Committee by the Presidents and Secretaries of the District and Taluka Committees and by the President of the Provincial Committee, now Hon'ble Shri Hire, and many other workers of the district, though not invited. Item No. 3 of the agenda is the stock taking of the elections. Shri Chhanusingh, the President of the District Congress Committee and also of this meeting, speaks of a report sent by him to the Provincial Committee. He analysed the report and stated that among other things it is divided in four parts, one of which deals with the situation inside the Congress (for) reasons of indiscipline and anarchy which have occurred. The minutes of the proceedings of the meeting reveal that there was discontent among the people against the selection of the candidates by the Province, that the speeches (at propaganda meetings) of Chhanusingh, the President of the District Congress Committee, were of a low level, that the workers of the Congress deceived and betrayed them, that the District Election Committee did not do the propaganda work that was expected of it, that the Provincial Committee did not provide the district with the necessary materials, that the leaders did not visit Sholapur, that there were differences among the workers, that the bureaucracy of Sholapur was against the Congress and many other things. There is, however, not a single word at the discussions in the said meeting about the impugned leaflet Ex. 167 or the poster Ex. 166 or

the Lokseva Ex. 182. Not only that, but there is not as much as a reference to the false propaganda of the Peasants' and Workers' Party at the said meeting. The petitioner himself was present at the meeting and took part therein. But even he has not stated a word about any of these. It thus appears that none of the three exhibits so loudly and vehemently complained against, figure as being responsible for causes of the failure of the Congress at the elections. What is more pertinent to note is that even Dr. Antrolkar who was present at the meeting has not a word to say about them or against respondent No. 1 or his agents at the said meeting. According to the petitioner, he started collecting evidence by the end of March. By that time he had examined the return of expenses Ex. 178 filed by respondent No 1 on 7th March 1952. In part E thereof appears the printing charges paid to Ajit Litho Works and Nirmal Printing Press. According to the petitioner, the leaflet (Ex. 167) had come to his notice somewhere in the end of December 1951 or may be in the beginning of January 1952. He also knew that this leaflet had done great harm to him. The petitioner also states that he, on examining the return of expenses, somewhere in the end of March, did not find anything objectionable therein. Of course, the learned Advocate for respondent No. 1 right from the beginning alleges that this leaflet Ex. 167 and poster Ex. 166 are subsequent fabrications. We, however, do not think that the petitioner is one who would go to that length. All that appears to us is that the leaflet, the poster and the publication in the Lokseva were so insignificant in nature judging the same from their poor circulation or possible effect in the vast constituency which comprised 1,200 villages, a population of 16 lacs and had 600-700 polling booths that nobody took any serious notice of these publications. Probably that is the reason why it did not even strike the petitioner to inquire into the Lokseva press about the publication of Ex 167 or to raise an objection to the return of expenses. A false return of expenses is a ground for setting aside the election under Section 100(2) (c) read with Section 124(4) and also a disqualification for membership under Section 140 of the Act. If the leaflet was as serious and mischievous as alleged, it could not have escaped the notice of the petitioner and he would never have, in our opinion, failed to object to the false return of expenses viz. failure to show the expenses of the printing paid to Lokseva and to have made that also a ground for setting aside the election. From this fact, two inferences are possible; firstly, that the petitioner did not believe that the leaflet was really printed in the Lokseva press or that it was not worth being taken serious notice of. Proceeding further according to the petitioner, he started collecting evidence for his petition in the end of March 1952. Exs. 166 and 167 are the chief grounds of attack in this petition. Still, while he was collecting and making a note of the available evidence in this case for preparing and filing of this petition, he makes no mention of either of the two in his diary Ex. 125. Although therein he refers to reports of meetings, the issues of Lokseva and another paper of the last two months and an unsigned poster. The latter admittedly has no reference to Ex. 166 as admitted by the petitioner himself. It is, therefore, more than abundantly clear that none of these three exhibits materially affected the result of his election evidently in the opinion of the petitioner. Nor was the election procured by the help of these documents in his opinion. What appears to have happened is that there were discussions among the Congress workers themselves that they betrayed the Congress, the leaders did not visit this constituency, the Provincial Committee did not render the necessary help. The selection of the candidates did not suit the choice of Congress workers as revealed at the Babulgaon meeting (Ex. 254). There was a large anti-congress propaganda in newspapers. An influential and greatly respected person like Karmaveer Jaguji held a meeting protesting against the selection of the petitioner and others as candidates, an application by thousands of persons was sent to the Provincial Congress Committee but with no result. These among others appear to be the causes of the failure of the petitioner. Even in his interview to Kisandas (Ex. 216) the petitioner does not appear to have mentioned the leaflet, Lokseva publication or the poster as the causes of his failure. That is what we think on the broad possibilities of the case.

Coming to the evidence on the point in issue, it consists of Manekchand Shah (Ex. 156) and some other witnesses. Ex. 156 states in his evidence that some voters approached him asking him as to how they should act in regard to voting in the face of the leaflet Ex. 167. As regards himself, he says that he thought that as Shri Jawaharlal Nehru has stated as set out in the leaflet, the petitioner may not have worked for the Congress. He thought that the observations of Shri Jawaharlal Nehru may be true. Further, he states that the voters themselves said nothing as to what they thought about the statements in the leaflet. The evidence of this witness, therefore, even if believed, does not go beyond proving the fact that the leaflet created some kind of doubt in his own mind and in the minds of the voters. It does not prove the fact of the election having been procured or materially affected by the distribution of the leaflets. The next witness is Vitthal Mhaske (Ex. 159). He states that "On reading the leaflet I thought that I

should not vote for Dr. Antrolikar. I explained to the Congress workers in the District about the distribution of the leaflets on or about 31st December 1951 orally. I also sent a chit to Bhumkar with Mehbub Tamboli. I did not receive any reply to the chit from Bhumkar. I explained to the voters that Shri Jawaharlal Nehru would not utter words as referred to in the leaflet in the course of my election propaganda but they were not satisfied with my explanation. I addressed 8 or 10 meetings till the date of the election after the distribution of the leaflet. I did not give any explanation with regard to the leaflet at these meetings..... A meeting on behalf of the Congress was held in my village after 26th December 1951 (on which date the leaflets were distributed). Dr. Antrolikar addressed that meeting and I was present at that meeting. Dr. Antrolikar did not criticise the leaflet at that meeting. It is not true that anybody in the meeting put questions to Dr. Antrolikar about the leaflet then..... We workers believed the statement in the leaflet. I, however, did not give up the propaganda work." This witness makes an attempt to show the serious nature of the pamphlet and suggests that the voters accepted the statements made in these leaflets as true and would not accept his explanation. Curiously enough, however, although according to this witness Dr. Antrolikar addressed a meeting in the village after the distribution of these pamphlets, he did not even care to criticise the leaflet, nor did any of the persons present at the meeting care even to question Dr. Antrolikar with regard to the statements in this leaflet. The witness states that the workers believed the statement in the leaflet to be true. However, he himself did not even care to give up the propaganda work for the petition, nor did he care to give any explanation with regard to the leaflet at the 8 or 10 propaganda meetings he addressed. Another witness Pawar (Ex. 165), however, states that a large section of congress workers believed that the statement in the leaflet was not true. This witness is a deserter of the Peasants' and Workers' party. He has deserted the same in April 1951 and joined the Congress. He worked in the election propaganda on behalf of the Congress. He visited 50/55 villages in connection with the work. His father-in-law is at present President of the Barsi Taluka Congress Committee. He himself was defeated at the Gram Panchayat election. He denies that the persons who were elected at that election belong to the Peasants' and Workers' Party. He has, however, now been elected to the District School Board and is a Vice-Chairman thereof. He had issued hand-bills Ex. 171 against Tulshidas Jadhav. This hand-bill is also against the Peasants' and Workers' Party as a reading thereof makes it obvious. The cross-examination of the witness suggests that he had misappropriated some moneys of the Peasants' and Workers' party organised by Jansatta, whose selling agent he was. Of course, he denies the allegation. But the bills and a post-card, Exs. 202 to 206 and Ex. 207 show that there must be truth in the suggestion. From these facts, it is clear that this witness is highly interested in the Congress and is not reliable. From a reading of Ex. 171 it also appears that he is very much against the Peasants' and Workers' Party whose candidate respondent No. 1 is. He also like his predecessors did not impress us as truthful witness. Next is the evidence of Kisanlal Marwari, a pleader Ex. 168. He states in his evidence, after referring to the fact of the distribution of the leaflets at a meeting in his village, "I explained to the voters but that had no effect. The voters flatly told me that they would vote for More and Jadhav as Shri Jawaharlal has stated about them in the leaflet and they would not vote for Dr. Antrolikar and Chhanusing. I visited nearly 25 villages after the leaflet. I found that the attitude of the people became hostile to the Congress in the villages where the leaflet was distributed." These statements are probably meant to show that the distribution of the leaflet seriously affected the voting against the petitioner. We have, however, already discussed the credibility of this witness in the foregoing part of this order and we have held that this witness cannot be believed. His evidence, therefore, does not take us any further. Next is the witness Sayad Mahomed Abdul Razak (Ex. 169). He is a firewood and charcoal merchant. He states that 'I told Salunke that I do not believe the contents thereof (Ex. 167).....I also got suspicious on reading the news in these papers.....I expressed my inability to work for him (petitioner) in view of the circulation of the leaflet and in view of the attitude of the voters on account of the said leaflet.....I told the secretary of the election committee of the Congress about the leaflet. The secretary only told me that the contents of the leaflet may not be correct.....On reading the leaflet, I was not very eager to take steps to counteract the same After receipt of the pamphlet by me, there were two or three meetings on behalf of the Congress. Abbas who addressed one of these meetings.....made no reference to the leaflet.....The Congress workers were telling the voters that the contents of the leaflet were false and should not be believed'. "This witness like his predecessors has made an attempt to prove the serious effects which the leaflet had on the voters." It is difficult for us to believe if we accept the

evidence of this witness that although the leaflet had such devastating effect on the voting world, no reference to the leaflet was made by Abbas who addressed the meeting on behalf of the Congress after the leaflets were distributed. Congress workers themselves did not appear to believe these statements in the leaflet. This witness is admittedly interested in the petitioner. He promised to work for him in the election although he later on changed his mind. He belongs to the Congress party since 1935 and worked in the Congress party in the elections of 1946. He is obviously an interested witness and did not inspire any confidence in us. We are, therefore, unable to accept his evidence. Next is a witness Sukhdev Fund (Ex. 170). He speaks of the distribution of the leaflets Ex. 167 by himself and states that thereafter there was a meeting held on behalf of the Congress. He heard speeches made at the meeting. One Shrivardar and some other local congressmen addressed that meeting. But no reference to the leaflet was made by any of the speakers at the meeting. Thus it appears that although this atrocious leaflet Ex. 167 had such damaging effect on the election of the petitioner, neither he himself nor any of the congress propagandists, who addressed the meeting after the distribution of the leaflet, even cared to refer to or contradict the same. It, therefore, appears that the leaflet was not at all distributed at meetings as alleged by the various witnesses or if it was neither the petitioner nor other congress propagandist took any notice of it at all. None has spoken about the effect of Ex. 182 or Ex. 166. But it is proved that the circulation of Lokseva was too meagre seriously to affect public opinion in this vast constituency (see Ex. 249 Register of Subscribers of the Lokseva and Register of sales of the paper Ex. 250). We must, therefore, hold that the petitioner has failed to prove that the election of respondent No. 1 had been procured or the result of the election had been materially affected by any corrupt practice as alleged.

(b) As to this, there is no reliable evidence to show what the exact effects of the abovesaid three publications were. It is, therefore, difficult to decide whether they were effectively counteracted. The burden of proving this issue No. 17 is on respondents Nos. 1 and 7. All that they have brought out in evidence is that the Congress issued a contradiction and that attempts were made to counteract the leaflet. That evidence, however, is very flimsy and quite insufficient to prove that the effect of the leaflet Ex. 167 and Lokseva Ex. 182 were effectively counteracted. This point must, therefore, be decided in the negative. Accordingly, we decide these issues as we have done.

20. *Group No. VI: Issues Nos. 8, 16, 18, 19 and 21.*—The points which fall for consideration under this group are (a) whether the allegations in the petition and the list constitute a major corrupt practice within Section 123(5) of the Act, (b) whether the petitioner proves that he deposited Rs. 1000 in the Reserve Bank of India in favour of the Secretary of the Election Commission, (c) whether he enclosed a receipt thereof with the petition, (d) if not, whether the petition is maintainable, (e) whether the petition is maintainable in view of the non-production of the alleged leaflet, poster and the issue of Lokseva Weekly with the petition, (f) are the particulars of the alleged corrupt and illegal practice in the list full and sufficient in law, (g) if not, is the petition maintainable? (h) is respondent No. 7 a necessary party to the petition?

(a) Hereinbefore we have set out what allegations should be made and proved for proof of a major corrupt practice as contemplated in Section 123(5). As noticed therein the petition lacks in allegations regarding (i) whether the statements complained against are in relation to the personal character or conduct of the petitioner or are in relation to his candidature, and (ii) that they were reasonably calculated to prejudice the prospects of that candidate's election. In the absence of these material allegations what has been stated in the petition even if accepted as proved would not amount to a major corrupt practice within the meaning of Section 123(5) of the Representation of the People Act. This point must, therefore, be decided in the negative.

(b) and (c) The petitioner has deposited Rs. 1000 in the Reserve Bank of India and the receipt thereof had been sent to the Election Commission along with the petition. These facts are not in dispute. But what is in dispute is that the deposit is not in favour of the secretary of the Election Commission. Section 117 requires that "the petitioner shall enclose with the petition a Government treasury receipt showing that a deposit of Rs. 1000 has been made by him either in a Government treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition." Now Ex. 251

is the original Chalan for cash of Rs. 1000 paid in the Reserve Bank of India, Bombay by the petitioner. It states therein that the amount has been paid as deposit for the petition made to the Election Commission at New Delhi. Now the Act does not contemplate any other deposit than that mentioned in Section 117. At least, none has been shown to us. It is, therefore, evident that this deposit has been made by the petitioner as a deposit of security for costs and the same has also been endorsed for payment to the Election Commission. The Election Commission itself appears to have taken the same in that light. Otherwise, it would have dismissed the petition as it was bound to do under Section 85 of the Act. We have, therefore, no hesitation in coming to the conclusion that the provisions of Section 117 have been substantially complied with. With the utmost respect to the Election Tribunal, Bhopal in Election Petition No. 94 of 1952 (Government of India Gazette Extraordinary, Part II Section 3 dated 11th March 1953, at page 745) we are unable to agree with the narrow view taken by the learned members of the Tribunal. The Election Commission, if it thought that the provisions of Section 117 were not complied with, was bound to dismiss the petition under Section 85 of the Act. But it did not do so obviously for the reason that it did not think that the provisions of Section 117 were not complied with by the petitioner. In any event, no such obligation is cast upon the Election Tribunal by law; whether to dismiss the petition on that technical ground or not is a matter of our discretion and we are not prepared to exercise that discretion against the petitioner (see 55 Bom. L.R. 334).

(d) In view of our findings on (b) and (c) this point does not survive. We, therefore, decide the first part of issue No. 16, i.e. (b) and (c) in the affirmative and (d) does not survive.

(e) It is true that it cannot very strictly be said that the petition has been filed on the three documents Exs. 166, 167 and 182. But even assuming that the petition is filed on the said documents, it is always a matter of discretion with the Court—whether to allow the production of those documents subsequently or not, whether the petitioner makes an application in that behalf or not. The petitioner has produced office translations of the said documents along with petition itself. The genuineness of Exs. 166 and 167 was disputed by respondent No. 1 from the beginning, but we do not think that they were fabrications. We have, therefore, allowed the production of the same. The mere non-production of these documents, therefore, does not make the petition not maintainable. We, therefore, decide this point in the affirmative.

(f) This point has already been discussed above and decided. We hold that in view of the evidence led, the particulars are not sufficient. We, therefore, decide this point in the negative, but we do not hold that the petition is not maintainable for that reason.

(g) There is no law, at least none has been pointed out to us, which requires that in the absence of full particulars, the petition must be dismissed. For want of sufficient particulars, the evidence regarding particulars not supplied, may not be looked into. However, the want of such particulars by themselves is not a ground for dismissal of the petition. This point is, therefore decided in the affirmative.

(h) The point is not pressed.

21 Respondent No. 3 argued, although no issue to that effect was sought, that the election of respondent No. 1 should be set aside and he being a candidate securing the next highest number of votes should be declared as elected. He has certainly made such a request in his written-statement (Ex. 20). But, in absence of an issue to that effect, his prayer cannot be granted. He argues that in the petition there is a clause praying for such further and other relief as the Tribunal may deem fit and that, therefore, he is entitled to this relief by virtue of that prayer. He also further argues that under Section 98 (c) of the Act, a Tribunal can grant such a relief. We are, however, afraid that this Section 98(c) has only a reference to the prayer mentioned in Section 84(b). In absence of such specific prayer we are unable to see our way, even if the petitioner succeeds, to grant that relief provided for by respondent No. 3. A reading of Section 101 also makes it clear that such a relief can be granted only if it is specifically prayed for in the petition. In the circumstances, we must express our inability to grant this request of respondent No. 3.

22. Taking an overall view of the case, we are of the opinion that no corrupt practice specified in Section 123(5) of the Act, as alleged, has been committed

either by respondent No. 1 or his agent or by any other person with the connivance of respondent No. 1 or his agent. We are also of the opinion that the election of respondent No. 1 has not been procured or the result of the election has been materially affected by any corrupt or illegal practice. This petition must, therefore, fail.

23. Before we close, we think it our duty to mention that the learned Advocates for the petitioner and respondent No. 1, Mr. H. V. Pataskar and Mr. A. G. Waghlikar placed their clients' view points very ably before the Tribunal in a very fair manner. They were of immense help to us. The petitioner as well as respondent No. 1 also fought this litigation on a high level in a dignified manner. The same, however, cannot be said of respondent No. 3.

ORDER

24. The petition is dismissed. The petitioner to pay Rs. 1000 to respondent No. 1 and Rs. 500 to the representative of the Advocate General as costs of this petition and bear his own. The other respondents shall also bear their own costs.

(Sd.) PRAMOD C. BHAT, *Chairman*,
Election Tribunal, Poona.

(Sd.) Y. K. GHASKADE, *Member*,
Election Tribunal, Poona.

(Sd.) S. B. JATHAR, *Member*,
Election Tribunal, Poona.

The 30th May 1953.

The learned Advocate for the respondent No. 1 submitted after the pronouncement of this judgment that an order may be made entitling him to withdraw the amount deposited by the petitioner with the Election Commissioner. A difficulty, however, arises as the amount deposited is Rs. 1000 while the costs to be paid by the petitioner are Rs. 1500. We think, therefore, that out of the said amount Rs. 500 may be withdrawn by the Government Pleader, Poona, as his costs and the balance by respondent No. 1 and the rest of the amount may be realised by him in whatever manner he is entitled to.

(Sd.) PRAMOD C. BHAT, *Chairman*,
Election Tribunal, Poona.

(Sd.) S. B. JATHAR, *Member*,
Election Tribunal, Poona.

(Sd.) Y. K. GHASKADE, *Member*,
Election Tribunal, Poona.

The 30th May 1953.

[No. 19/97/52-Elec.III/9158]

By Order,
P. R. KRISHNAMURTHY, Asstt. Secy.

